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December 17, 2002

**Ex Parte Presentation**

Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, D.C. 20554

Re: *Application by SBC Communications Inc., et al. for Provision of In-Region,  
InterLATA Services in California*, WC Docket No. 02-306

Dear Ms. Dortch:

Earlier today, AT&T filed for the first time an excerpt from its August 2001 comments to the California PUC alleging that the specific terms under which SBC permits CLECs to resell advanced services in California are “unreasonable.”<sup>1</sup> As discussed in more detail below, the precise arguments included in this excerpt were raised and resolved in the Commission’s review of SBC’s Arkansas/Missouri application. Thus, even assuming the Commission views those arguments as properly presented in this proceeding, they should be rejected here as well.

AT&T’s excerpt challenges five specific aspects of ASI’s advanced services resale offerings in California: (1) restriction of the resale of customer service contracts (“CSCs”) to “similarly situated” customers; (2) the imposition of “termination liability” on end users that cancel CSCs; (3) the limitation of resale offerings to locations where there is “existing capacity” on the deployed facilities of SBC’s advanced services affiliate (ASI); (4) the limitation of liability for “improper installation and maintenance;” and (5) access to OSS. AT&T raised these precise allegations in response to SBC’s application for 271 relief in Missouri and Arkansas, and SBC addressed them in the record in that proceeding.<sup>2</sup> Critically, the Commission then expressly

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<sup>1</sup> See Letter from Peter M. Andros on behalf of AT&T to Marlene Dortch, FCC (Dec. 17 2002).

<sup>2</sup> See, e.g., Habeeb Reply Aff. ¶¶ 30-34, CC Docket No. 01-194 (FCC filed Oct. 4, 2001) (Attachment B to this letter) (noting that AT&T had not sought to negotiate an interconnection agreement amendment with ASI, but addressing AT&T’s claims on the merits in any event). SBC made the same points to the CPUC in a filing provided as part of this Application. See Habeeb Reply Aff. ¶¶ 9-14 (Cal. PUC filed Sept. 13, 2001) (App. D, Tab 235, page 177).

rejected AT&T's allegations in its order approving the application. Specifically, the Commission noted that "commenters" – including AT&T – had "raise[d] concerns" about (1) "language . . . limiting DSL transport resale to 'similarly situated' customers," *see Arkansas/Missouri Order* ¶ 83; (2) "termination liability provisions," *id.*; (3) restrictions on "the purchase of DSL transport to where there is existing capacity," *id.* ¶ 83 n.260; (4) "termination liability provisions," *id.* ¶ 83; and (5) "access to . . . OSS," *id.* ¶ 47. The Commission rejected each of those concerns, *see id.* ¶¶ 47, 83, it expressly "disagree[d] with commenters" who challenged SBC's "compli[ance] with checklist item 14 in its provision of DSL services," *id.* ¶ 79, and it approved the application, *see id.* ¶ 140.

As SBC has maintained throughout this proceeding, ASI's advanced services resale offerings in California are identical in all material respects to the offerings the Commission approved in the *Arkansas/Missouri Order*.<sup>3</sup> Indeed, a comparison of the ASI interconnection agreement upon which SBC relies in this proceeding with the showing SBC made in Arkansas and Missouri demonstrates that each of the provisions challenged in AT&T's excerpt was presented in Arkansas and Missouri as well.<sup>4</sup> In view of the Commission's express rejection of those challenges in the *Arkansas/Missouri Order*, it necessarily follows that – if the Commission considers them to have been properly raised in this proceeding<sup>5</sup> – they should be rejected here as well.

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<sup>3</sup> *See, e.g.*, SBC Opening Br. at 81-82; SBC Reply Br. at 68-69; Habeeb Aff. ¶¶ 27-46 (App. A, Tab 8).

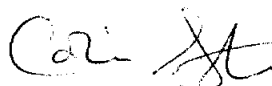
<sup>4</sup> (1) *Compare* ASI-Logix Agreement § 11G ("CLEC may resell new CSCs only to customers similarly situated to SBC-ASI's retail CSC customer.") (Attachment C to this letter) *with* ASI-Navigator Agreement § 11I (App. B, Tab 11) ("A CLEC may request a CSC that has the same terms and conditions as an SBC-ASI CSC to resell to a similarly situated customer."); (2) *compare* Habeeb Aff. ¶ 42, CC Docket No. 01-194 (FCC filed Aug. 20, 2001) (Attachment A to this letter) ("If a customer elects to terminate its service with ASI, it may be subject to termination liability agreed to by the customer and contained in the [CSC].") *with* ASI-Navigator Agreement § 11I ("Pursuant to the terms of the CSC, the End User shall be responsible for termination liability for the remainder of the CSC term."); (3) *compare* ASI-Logix Agreement § 11H ("Services are subject to resale under this Agreement only where such Services have been deployed by SBC-ASI and only where there is existing capacity on SBC-ASI's deployed facilities to provide the Services.") *with* ASI-Navigator Agreement § 11J ("Services are subject to resale under this Agreement only where such Services have been deployed by SBC-ASI/8-State and only where there is existing capacity on SBC-ASI/8-State's deployed facilities to provide the Services."); (4) *compare* ASI-Logix Agreement § 3C ("ASI's sole liability . . . is limited to refund of the proportionate charge for the period during which the service was affected.") *with* ASI-Navigator Agreement § 3C ("SBC-ASI/8-State's sole liability . . . is limited to refund of the proportionate charge for the period during which the service . . . was affected."); (5) *compare* ASI-Logix Agreement §§ 26-27 ("Ordering and Terminating DSL Transport Service;" "DSL Transport Operational Support Systems ('OSS')") *with* ASI-Navigator Agreement §§ 25-26 ("Ordering and Terminating DSL Transport Service;" "DSL Transport Operational Support Systems ('OSS')").

<sup>5</sup> Even if the Commission were to consider AT&T's last-ditch filing as timely, AT&T still has never challenged the specific terms ASI makes available for resale pursuant to checklist item 14. Although AT&T has contended that ASI unlawfully refuses to make DSL transport generally available for resale, *see* AT&T Comments at 49-50 (Oct. 9, 2002), it has not – in marked contrast to its comments in the Arkansas/Missouri proceeding – challenged the specific terms on which ASI makes available those advanced services it does offer for resale. AT&T's November 4, 2002, Reply Comments – which referenced but did not attach the excerpt filed earlier today – cited the excerpt only in connection with the public interest standard.

For the Commission's convenience, I am attaching the opening and reply affidavits of John Habeeb in the Arkansas/Missouri proceeding, as well as the ASI-Logix interconnection agreement on which SBC relied in that proceeding. The ASI-Navigator agreement, which SBC relies upon in this proceeding, can be found at Appendix B, Tab 11. Rebecca Sparks of SBC discussed these various attachments with John Stanley of the FCC over the telephone today.

In accordance with the Commission's Public Notice, DA 02-2333 (Sept. 20, 2002), SBC is filing this letter electronically through the Commission's Electronic Comment Filing System. Thank you for your assistance in this matter.

Yours truly,



Colin S. Stretch  
*Counsel for SBC Communications Inc.*

**Attachments**

cc: Christopher Libertelli  
Matthew A. Brill  
Jordan Goldstein  
Monica Desai  
John Stanley  
Renée Crittendon  
Tracey Wilson  
Lauren Fishbein  
Brianne Kucerik  
Phyllis White  
Qualex International

## **Attachment A**

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554**

In the Matter of	)	
	)	
Joint Application by SBC Communications	)	
Inc., Southwestern Bell Telephone Company,	)	
and Southwestern Bell Communications	)	CC Docket No. _____
Services, Inc. d/b/a Southwestern Bell Long	)	
Distance for Provision of In-Region,	)	
InterLATA Services in Arkansas and Missouri	)	

**AFFIDAVIT OF JOHN S. HABEEB  
FOR ARKANSAS AND MISSOURI**

**STATE OF TEXAS**            )  
  )  
**CITY OF SAN ANTONIO** )

**STRUCTURAL SEPARATION OF ADVANCED SERVICES  
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I, John S. Habeeb, being of lawful age and duly sworn upon my oath, do hereby depose and state as follows:

### **PROFESSIONAL EXPERIENCE AND EDUCATIONAL BACKGROUND**

1. My name is John S. Habeeb. My business address is 300 N. Convent, Room 1998, San Antonio, TX 78205. I am Director of Regulatory and Interconnection for SBC Advanced Solutions, Inc. ("ASI"), a subsidiary of SBC Communications Inc. I am responsible for regulatory matters for ASI.
2. I accepted my current position on May 1, 2001. I have worked for Southwestern Bell Telephone Company ("SWBT") and its affiliates for more than 20 years. Over this period, I have worked in SWBT's Outside Plant Operations group, its Valuations and Separations organization, and its Industry Analysis group. From 1989 to 1993, I worked as an Internal Auditor for the National Exchange Carrier Association (NECA/BellCore) in New Jersey. I have a Bachelor of Business Administration degree from Texas A&M-Kingsville, Kingsville, Texas.

### **EXECUTIVE SUMMARY**

3. This affidavit demonstrates (a) how ASI operates as a competitive local exchange carrier ("CLEC") by utilizing the processes made available to it by Southwestern Bell Telephone Company ("SWBT") to order network elements and access services to provide Advanced Services; and (b) how ASI satisfies its obligations under § 251(c).

### **ASI OPERATES AS A CLEC**

4. ASI was incorporated as a Delaware corporation, and established pursuant to the

SBC/Ameritech Merger Order.<sup>1</sup> ASI has certificates of authority to operate in Missouri from the Missouri Public Service Commission ("Missouri PSC") and in Arkansas from the Arkansas Public Service Commission ("Arkansas PSC").

5. ASI has executed "arms-length" interconnection agreements with SWBT. In Arkansas, ASI's interconnection agreement with SWBT was approved by the Arkansas PSC on November 4, 1999. In Missouri, ASI currently has an interconnection agreement with SWBT based on the Missouri 271 Agreement ("M2A").
6. ASI participates in industry meetings and forums as a CLEC. ASI receives information and notification of changes to SWBT's network, such as Project PRONTO, through network disclosures and Accessible Letters issued by SWBT.
7. ASI does the following: (1) performs network planning and engineering functions related to advanced services; (2) uses the same interfaces, processes, and procedures as are made available to the CLECs for placing orders for unbundled network elements that are necessary for the provision of advanced services; (3) designs the advanced services it wishes to offer; (4) assigns the equipment necessary to provide advanced services; (5) creates and maintains all records associated with its customers' advanced services accounts; and, (6) maintains and repairs advanced services equipment it owns.<sup>2</sup>

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<sup>1</sup> See Memorandum Opinion and Order, Applications of Ameritech Corp., Transferor, and SBC Communications Inc., Transferee, For Consent to Transfer Control of Corporations Holding Commission Licenses and Lines Pursuant to Sections 214 and 301(d) of the Communications Act and Parts 5, 22, 24, 25, 63, 90, 95 and 101 of the Commission's Rules, 14 FCC Rcd 14,712 (1999) ("SBC/Ameritech Merger Order"), vacated in part, Association of Communications Enterprises v. FCC, 235 F.3d 662 (Jan. 9, 2001), clarified, slip op. (Jan. 18, 2001) ("ASCENT"). Appendix C to the SBC/Ameritech Merger Order contains the SBC/Ameritech Merger Conditions ("Merger Conditions").

<sup>2</sup> ASI contracts with SWBT for certain OI&M functions, including maintenance and repair of certain equipment in SWBT central offices, under published rates, terms and conditions that SWBT also makes

8. ASI uses the same interfaces that SWBT provides to CLECs for access to its Operational Support Systems (“OSS”) for the pre-ordering, ordering, provisioning, maintenance and repair, and billing functions related to unbundled network elements. These interfaces, and the associated processes, are discussed in the affidavits of Beth Lawson. (App. A – AR, Tab 13, App. A – MO, Tab 14)
9. Pre-ordering. To obtain loop pre-qualification information, ASI uses the same OSS interfaces that SWBT makes available to CLECs: (1) the Verigate graphical user interface; and (2) the CORBA application-to-application interface.
10. Ordering. ASI has elected to submit orders for interconnection, services and unbundled network elements (“UNEs”) through SWBT’s EDI interface. ASI has purchased a commercial clearinghouse service called ExchangeLink from Telcordia that processes and transmits Local Service Requests (“LSRs”) to SWBT via the EDI interface.
11. Maintenance and Repair. ASI uses SWBT’s Toolbar Trouble Administration interface to submit trouble reports, view updates, and to obtain completion notifications on maintenance and repair of interconnection, services and UNEs received from SWBT.
12. Provisioning. ASI provisions Frame Relay and Cell Relay services to business customers in SWBT’s service area. When necessary, ASI orders access services from SWBT as wholesale inputs to the provision of Frame Relay and ATM services. Frame Relay and ATM networks are comprised of multiple packet switches

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available to unaffiliated providers of advanced services. This affiliate agreement can be found on the SBC website at <http://www.sbc.com/PublicAffairs/PublicPolicy/Regulatory/0,2951,188,00.html#42.25>. In addition, ASI also virtually collocates equipment in SWBT central offices under terms and conditions that SWBT makes available to all telecommunications carriers on a nondiscriminatory basis.



interconnected with transport facilities.

13. ASI provisions Digital Subscriber Line (“DSL”) Transport using the high frequency portion of the loop UNE (“HFPL UNE”) or Broadband Service provided by SWBT. Where ASI orders the HFPL UNE from SWBT as a wholesale input to provision the DSL Transport, ASI provides its own splitters in order to separate the HFPL. Orders for HFPL UNEs are submitted via the SWBT EDI interface.
14. Billing and Collection. ASI has a nondiscriminatory arrangement with SWBT for billing and collection services that is memorialized in a Billing and Collections Agreement (“B&C Agreement”).<sup>3</sup> Under the B&C Agreement, which is available to CLECs, ASI billing data is forwarded to SWBT on a daily basis via electronic transfers. The ASI charges are then placed on a separate bill page under ASI’s name.

#### **ASI’S COMPLIANCE WITH SECTION 251(c) OBLIGATIONS RELATING TO ADVANCED SERVICES**

15. On March 6, 2001, as a result of the ASCENT decision, ASI took on the obligation to comply with § 251(c) duties as they relate to SBC’s advanced services offerings. The paragraphs below describe SBC’s current advanced service offerings, and how ASI is meeting its § 251(c) obligations.

#### ***ASI’s Advanced Services Offerings And Operations***

16. ASI currently provides a number of different types of advanced services in Missouri and Arkansas. ASI provides retail Frame Relay and ATM Cell Relay services to business customers. ASI also offers retail custom serving arrangements to business customers, including Internet Service Providers (ISPs), which may include such

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<sup>3</sup> The B&C Agreement between ASI and SWBT can be found on the SBC website at <http://www.sbc.com/PublicAffairs/PublicPolicy/Regulatory/0,2951,188,00.html#43>.

services as Frame Relay, ATM Cell Relay, Native LAN Plus, and DSL Transport to business customers' Remote local area networks.

17. ASI provides wholesale DSL Transport to unaffiliated ISPs. ASI also provides wholesale DSL Transport to its affiliate, Southwestern Bell Internet Services, Inc. ("SBIS"), which is an information service provider that provides DSL Internet Service at retail to end-user customers. ASI continues to provide retail DSL Transport service to a small embedded base of "grandfathered" retail DSL Transport customers. ASI's DSL-related services are described in more detail below.

*ASI's Wholesale DSL Transport Telecommunications Service*

18. ASI's business plan is concentrated significantly on the provision of wholesale DSL Transport to ISPs, both affiliated and unaffiliated. ASI currently provides DSL Transport to several hundred ISPs in its 13-state region. DSL Transport accounts for the bulk of ASI's service provided in Missouri and Arkansas.
19. High speed data transport (whether provided using DSL or other technology) is an important input to broadband Internet access, but it is only one of several inputs. To provide their end-user customers with DSL Internet service, ISPs purchase DSL Transport from ASI and combine it with their own Internet-related functionalities and services, including servers, routers, e-mailboxes, web sites and other services (e.g., customized web pages, instant messaging, data storage).
20. ASI's offering of DSL Transport to unaffiliated ISPs has all of the attributes of a wholesale service. To provide wholesale DSL Transport service to ISPs, ASI does not have to engage in the type of extensive marketing, sales, or other customer care functions that would be required for a mass market retail product, nor incur the costs

associated with performing those retail functions.

21. With ASI's wholesale DSL Transport service, unaffiliated ISPs assume the "consumer-oriented tasks" of marketing DSL Transport service as part of their own retail information service product. Only the ISP may accept orders for its DSL Internet services, and ASI accepts orders for its DSL Transport service only from the ISPs. End-user customers order DSL Internet access services directly from an ISP at a price established by that ISP.
22. To clarify the ISP's responsibilities, ASI is requiring that all ISPs in the SWBT region sign written agreements to purchase DSL Transport service. Previously, a number of small volume ISPs – constituting less than five percent (5%) of ASI's total DSL Transport lines – ordered services from ASI under generally available terms and conditions on SWBT's public website. These terms and conditions have been removed from the website, and a proposed agreement memorializing the terms and conditions for the parties' business relationship (the "Proposed Terms and Conditions") for the remainder of the year has been developed.<sup>4</sup> On August 20, 2001, ASI sent a notice to these ISP customers notifying them of the new agreement and requesting that they sign a written agreement with ASI within forty-five (45) days. The Proposed Terms and Conditions are modeled after the terms and conditions formerly on the web site, with the following changes further clarifying that the ISP is purchasing a wholesale product from ASI.<sup>5</sup> First, ASI has clarified the language concerning the ISP's responsibility to provide customer support. The web site terms

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<sup>4</sup> During the term of this agreement, ASI will be negotiating a new agreement with these ISPs.

<sup>5</sup> The Proposed Terms and Conditions also contain formatting changes and modifications that reflect the speeds currently offered.

and conditions stated that the ISP had to provide “Tier 1” customer support. The Proposed Terms and Conditions more explicitly state that the ISP is responsible for handling all customer care calls from its end-user customers. Second, the Proposed Terms and Conditions explicitly require the ISP to provide Virtual Path/Virtual Connection (“VP/VC”) information to ASI. This information has always been necessary, because ASI cannot provision DSL Transport Service to the ISP’s end user locations without this information, and the Proposed Terms and Conditions clarify that necessity through an explicit contractual requirement. Finally, the Proposed Terms and Conditions contain clarifying language that the ISPs provision all customer premises equipment (“CPE”) and wiring, and provide customer service, marketing, billing, ordering, and repair. Attachment A contains a copy of the Proposed Terms and Conditions.

23. For future ISP customers, ASI also has updated its DSL Addendum to its General Services Agreement that further clarifies the wholesale relationship between ASI and ISPs. New ISPs will be required to sign the DSL Addendum with ASI if they wish to order ASI’s DSL Transport, and ASI will make this revised DSL Addendum available to all ISPs on a nondiscriminatory basis throughout the SWBT region. The revisions contain the same clarifications as those made to the Proposed Terms and Conditions, and also make available a volume and term discount plan to ISPs.

24. ASI has existing volume and term agreements with a number of ISPs. The vast majority of DSL lines sold to unaffiliated ISPs – more than seventy-five percent (75%) – are sold under a volume and term discount plan. Although the volume and term arrangements are older agreements, and ASI no longer offers these specific

plans, ASI is offering all ISPs a new volume and term discount plan. Under this plan, an ISP can receive up to a ten percent (10%) discount off of the month-to-month wholesale DSL Transport price, if it commits to 250 or more in service DSL Transport lines during a 12-month period. An ISP can receive somewhat less of a discount if it commits to between 50 and 249 in service DSL Transport lines during a 12-month period under this plan. A copy of the revised DSL Addendum is contained in Attachment B.<sup>6</sup>

25. With these new agreements, all ISPs have or will have available a volume and term discount plan, and all new ISPs will enter into the revised DSL Addendum which includes a volume and term discount plan. The smaller ISPs that constitute less than five percent (5%) of ASI's total DSL Transport volume will be offered a volume and term discount plan, but will also have the option to continue under the terms and conditions of their current, non-discounted arrangements through the end of the year while they negotiate a new agreement.
26. ASI provides certain initial installation and maintenance and repair services for ISPs. These services are similar to those an incumbent LEC performs on behalf of its CLEC customers, when providing resold services or unbundled network elements. The ISPs are responsible for receiving calls from their end-user customers regarding maintenance and repair issues, and for determining whether ASI's DSL Transport is involved with the trouble reported by the customer. If the installation or repair issue relates to ASI's DSL Transport, it is the ISP and not the end-user customer that

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<sup>6</sup> A copy of the notice ASI is providing to ISPs regarding the Proposed Terms and Conditions and revised DSL Addendum is contained in Attachment C.

should contact ASI.<sup>7</sup> If an ISP customer wants to disconnect, change, or move DSL Internet service, he or she must contact the ISP to initiate the action. The ISP must, in turn, place an order with ASI to disconnect or change the service as required by the end-user. ASI will not accept requests from end-users for such actions.<sup>8</sup>

27. As discussed in the initial Missouri 271 application, ASI previously offered ISPs two billing options. ASI either billed the end-user on behalf of the ISP for the DSL Transport service (referred to as “split-billing” or “end-user billing”), or billed the ISP directly for the DSL Transport (“consolidated billing”). Under the consolidated billing option, end-users are billed by the ISP for the ISP’s DSL Internet service (which incorporates ASI’s DSL Transport as an input). Under the split-billing option, ASI collected recurring and non-recurring charges for the DSL Transport service from the ISP’s end-users.
28. As of August 1, 2001, ASI no longer offered ISPs the “split-billing” option for DSL Transport, and it has initiated a plan to enable ISPs to transition to other billing arrangements. ASI has stopped accepting orders from ISPs requesting a split-billing arrangement in the SWBT states. ASI is now working with the ISPs to convert existing split-billed accounts to consolidated billing on or before December 31, 2001. ISPs lacking the systems capability to handle this billing have several options available to them, including contracting with SWBT pursuant to a standard billing and collection agreement to perform the billing function on their behalf. A copy of

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<sup>7</sup> In the event an end-user somehow manages to reach ASI directly, and the end-user has a problem with his or her DSL Transport service, ASI will assist the end-user in resolving the problem, in coordination with the end user’s ISP.

<sup>8</sup> However, if a customer disconnects his or her telephone service with SWBT, SWBT will automatically terminate ASI’s HFPL UNE, because the HFPL UNE is only available where SWBT provides voice service.

the June 22, 2001 letter from ASI to its ISP customers notifying them of these changes is contained in Attachment D.

29. DSL Transport service is a highly competitive wholesale input. Unaffiliated ISPs will likely have one or more means of providing their end-user customers with high speed Internet access. The ISP may provide the DSL Transport component (or equivalent service) of Internet access itself, it may purchase transport from a competing DSL provider or it may use ASI's DSL Transport service. The ISP also may obtain DSL Transport from a CLEC that purchases unbundled network elements from SWBT or another facilities-based provider and combines these elements or services with its own facilities, including a DSLAM and splitter.
30. An unaffiliated ISP that has a business relationship with ASI may purchase ASI's DSL Transport to use as a wholesale input to its DSL Internet access service. In addition, the serving ISP must have connectivity to ASI's ATM network in order to connect the DSL Transport to the ISP's Internet server. An ISP cannot submit an order to ASI for DSL Transport if that ISP does not have ATM connectivity. Thus, ASI does not market and will not provide "stand-alone" DSL Transport to end-users on a retail basis. ASI's customer is the ISP, not the retail end-user. The ISP provides the end-user an information service that is the combination of the DSL Transport and access to the Internet, which may include other related Internet services and functions.

ASI's "Grandfathered" Retail DSL Transport Telecommunications Service

31. As stated above, ASI does not offer or sell its DSL Transport to end-users on a "stand-alone" basis. By itself, DSL Transport provides an end-user customer without a means to access the Internet. Without the connection from the ATM network to the

Internet that the ISP provides, the DSL Transport connection between the end-user and the ATM network would not serve a useful purpose.

32. SWBT formerly sold DSL Transport service to end-user customers before ASI became fully operational in Missouri and Arkansas, but this service was subsequently discontinued. SWBT ceased making this DSL Transport service generally available on a retail mass-market basis to end-user customers. Existing customers who were sold DSL Transport by SWBT were transferred to ASI in accordance with the provisions of the SBC/Ameritech Merger Conditions. At this time, ASI currently has fewer than 200 "grandfathered" residential DSL Transport customers in the State of Arkansas and fewer than 1,100 in Missouri. ASI has continued to serve these "grandfathered" DSL Transport customers and has agreed to make them available for resale at a wholesale discount.
33. Because ASI's business plan does not include the mass-marketing of DSL Transport service at retail to end-users, ASI has been transitioning its "grandfathered" retail DSL customers to ISPs, with those customers' consent. ISPs are generally in a better position to service these customers, because they have designed a business plan to serve the mass-market, and ASI does not have such a plan.

*SBIS' Retail DSL Internet Access Information Service*

34. SBIS uses ASI's DSL Transport as a wholesale component of its retail DSL Internet service, just like other ISPs use ASI's DSL Transport as a wholesale component of their information services.
35. SBIS markets its DSL Internet service directly to end-user customers through a joint marketing agreement negotiated with SWBT. Under the terms of this agreement,



SBIS pays SWBT for soliciting and accepting orders for SBIS. In performing the joint marketing function for SBIS, the SWBT joint marketing representatives in the Emerging Products Center (“EPC”) take calls from customers requesting DSL Internet service from SBIS. These representatives verify whether the prospective customers meet the criteria for service that SBIS has established, and transmit customer ordering information to SBIS and ASI.

36. In the event a customer contacts the EPC for DSL Internet service but indicates to the joint marketing representative that he or she wishes to obtain DSL Internet service from someone other than SBIS, the customer is instructed to contact his or her ISP of choice to arrange for service.
37. Once service is established, SBIS bills its end-user customers through the same generic billing and collection agreement SWBT offers to interexchange carriers and CLECs. SBIS charges are listed on a separate page of the customer’s bill that bears the SBIS name and contains the monthly charges to SBIS’ customers for DSL Internet service.
38. ASI and SBIS have reviewed their operations and have implemented a number of modifications to their systems and training procedures to ensure that, as far as possible, customer service representatives do not offer or sell DSL Transport services on a “stand-alone” basis to end-user customers, because this is a service that neither ASI nor SBIS offers. These customer service representatives have been directed to inform customers that they may obtain DSL Internet service either from SBIS or from an unaffiliated ISP, but that ASI does not offer a stand-alone retail DSL Transport service. To that end, ASI has taken the following steps:

- ASI is eliminating the “split-billing” option, as discussed above.
- ASI has developed and is implementing a systems enhancement to prevent EPC customer service representatives from taking orders on behalf of non-affiliated ISPs. This enhancement currently is scheduled to be implemented in the first quarter of 2002.
- The website and other published materials (advertising, methods and procedure documents, etc.) that became the subject of comments in the initial Missouri 271 proceeding have been reviewed and revised to eliminate any suggestion that DSL Transport is a retail product. Where DSL Transport is referenced, it is referred to as a product sold to ISPs and large business customers. "DSL Internet service" is the term used to refer to the retail product that SBIS markets to retail end-user customers. References to “DSL Only” have been removed from the Southwestern Bell website, and the language on the site makes clear that the service being offered is DSL Internet service provided by SBIS. ASI offers DSL Transport service in Missouri and Arkansas to SBIS under the same rates, terms and conditions that it offers to unaffiliated ISPs. SBIS incorporates ASI’s DSL Transport service into its Internet access service and sells the resulting combination, a DSL Internet service, to end-users. ASI has no contractual relationship with SBIS’ end-user customers for the provision of DSL Transport provided by SBIS as part of its DSL Internet service. The DSL Internet service provided by SBIS is branded as “Southwestern Bell DSL Internet.” SWBT’s public website contains a link to a web page for DSL Internet service (<http://www.swbell.com>).

***Negotiation Of Interconnection Agreements (§ 251(c)(1))***

39. ASI has entered into good faith negotiations with requesting CLECs regarding the § 251(c) duties, and it has reached agreement with several CLECs in Missouri and Arkansas. Among these is Logix Communications Corporation (“Logix”). The Logix Agreement contains binding legal commitments addressing all applicable § 251(c) duties as they apply to SBC’s advanced services offerings and operations. (App. E – AR, Tab 25; App. G – MO, Tab 114) On April 19, 2001, the Logix Agreement was submitted to the Arkansas PSC and approved on May 17, 2001. On March 9, 2001, the Logix Agreement was submitted to the Missouri PSC and approved under § 252(e) on April 30, 2001.
40. CLECs may MFN into the terms and conditions of this agreement in accordance with Section 252(i). In addition, ASI offers a generic interconnection agreement for the SWBT region. This generic agreement is available on the SBC CLEC web site at <https://clec.sbc.com>. ASI also will negotiate different terms and conditions with carriers who request negotiations under Section 251. Thus, ASI is negotiating in good faith the terms and conditions of interconnection agreements with all requesting carriers in accordance with § 251(c)(1) and the Commission’s rules implementing that subsection.

***Resale Of Retail Services (§ 251(c)(4))***

41. ASI makes all of its retail telecommunication services – including Frame Relay (which is also tariffed as an intrastate service in both Arkansas and Missouri), Customer Specific Arrangements (CSAs), and “grandfathered” DSL Transport – available for resale at a wholesale discount. See Logix Agreement § 11F.

42. ASI will offer CSAs to any similarly situated customer that meets the terms and conditions of that particular arrangement. If a customer elects to terminate its service with ASI, it may be subject to termination liability agreed to by the customer and contained in the CSA. Although CSAs are limited to specific locations, they can be resold to similarly situated customers. See Logix Agreement § 11G. These are the same requirements for resale of CSAs by SWBT in Missouri and Arkansas.
43. For the “grandfathered” retail DSL Transport customers, consistent with 47 C.F.R. § 51.615, CLECs may resell, at wholesale rates, these DSL Transport services for resale to these same “grandfathered” customers to whom ASI provides such services. See Logix Agreement § 11D.
44. ASI will continue to offer for resale its wholesale DSL transport services in accordance with § 251(b)(1).
45. ASI will offer, on an interim basis, the same wholesale discount that has been applied to SWBT. ASI reserves the right, however, to request that these state commissions establish a wholesale discount for ASI’s services based on ASI’s avoided costs consistent with § 252(d)(3). If a state commission establishes a different wholesale discount for ASI’s services, all resold services will be trued-up to the ASI-specific discount in that state.<sup>9</sup> See Logix Agreement § 11F3.

***Interconnection (§ 251(c)(2))***

46. Prior to the ASCENT decision, ASI offered interconnection at its ATM switches.

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<sup>9</sup> In accordance with ¶¶ 47-49 of the Merger Conditions, ASI will provide the promotional resale avoided cost discount at the rates set forth in the Merger Conditions (currently 32%) for those telecommunications services that ASI provides at retail to residential End User customers that are subject to the Merger Condition requirements. See Merger Conditions, 14 FCC Rcd at 15,018-19, ¶¶ 47-49; Logix Agreement § 11F4.

Because of the dissimilarities between ASI's business and that of SWBT, it does not have an extensive number of technically feasible points where carriers could interconnect, or a variety of types of equipment and facilities with which carriers could interconnect. Because of the nature of data networks, ATM switches are the only technically feasible points within ASI's network where a CLEC could interconnect. The Logix Agreement provides for interconnection at ATM switches, and it also provides a process by which the CLECs may request interconnection at any other technically feasible point. See Logix Agreement §§ 16 & 17. If the parties cannot reach agreement on technically feasible points of interconnection, the dispute resolution provisions of the agreement permit the dispute to be submitted to the state commission for resolution.

***Unbundling (§ 251(c)(3))***

47. As with resale and interconnection, ASI's network, service offerings, and customers are limited when compared to SWBT, and its unbundling requirements similarly should be limited. The only "network elements" that ASI owns are advanced services equipment and limited OSS. All of ASI's transmission facilities (including high frequency portion of loops, interoffice transport, etc.) are purchased from SWBT, and such facilities are equally available from SWBT to unaffiliated CLECs as they are to ASI.
48. Packet Switching. The only telecommunications equipment owned by ASI are packet switches – DSLAMs, ATM switches, and Frame Relay Engines. In the UNE Remand Order, the Commission found that access to unbundled packet switching was not

required except in certain limited circumstances.<sup>10</sup> These limited circumstances require, in part, placement of a DSLAM in a remote terminal.<sup>11</sup> All of ASI's packet switches in Arkansas and Missouri are located in SWBT central offices, and none are located in a SWBT or ASI remote terminal. Accordingly, ASI has no packet switches today that would be required to be unbundled under the FCC's rules.

49. In the event that a CLEC requests packet switching in the future and all the elements of the Commission's rule are met, ASI has included language in its agreement that tracks the packet switching unbundling rule. See Logix Agreement, § 29A. This is identical to SWBT's binding legal commitment to provide packet switching in Kansas and Oklahoma,<sup>12</sup> and SWBT's binding commitment in the M2A and the Arkansas 271 agreement ("A2A").

50. OSS. ASI's OSS is also extremely limited and focuses on its largest service – wholesale DSL Transport. ASI was established as a separate advanced services affiliate pursuant to the Merger Conditions. According to the terms of those conditions, provided that it received assets or employees from the SBC/Ameritech ILECs and operated consistent with the conditions, the ILECs' obligations under § 251 and § 252 were not expected to apply to ASI, including the need to provide access to its OSS functionality. For DSL Transport, ASI has OSS interfaces in place and available to support pre-ordering, ordering, provisioning and repair.

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<sup>10</sup> Third Report and Order and Fourth Notice of Proposed Rulemaking, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, 15 FCC Rcd at 3696, 3835, ¶ 306 (1999) ("UNE Remand Order"); see also 47 C.F.R. § 51.319(c)(5).

<sup>11</sup> See UNE Remand Order, ¶ 313 (packet switching requirement is limited to "situations in which the incumbent has placed its DSLAM in a remote terminal"); see also 47 C.F.R. § 51.319(c)(5)(iv).

<sup>12</sup> Memorandum Opinion and Order, Joint Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance for Provision of In-Region, InterLATA Services In Kansas and Oklahoma, CC Docket No. 00-217, FCC 01-29, ¶ 243 (rel. Jan. 22, 2001).

51. As described above, ASI's packet switches are not currently required to be unbundled under the FCC's rules. Therefore, ASI's OSS could only be useful for the resale of ASI services. But the number of ASI customers available for resale is minimal. As explained above, less than 1,300 customers in Missouri and Arkansas. Large customer CSAs that are available for resale are not resold through the use of mechanized OSS even in SWBT, and likewise will not be resold using ASI's OSS.
52. Accordingly, ASI's OSS unbundling obligation is extremely limited. Given the small volume of anticipated resold customers and the unique nature of most of the services, manual systems and limited electronic access to ASI's OSS should be sufficient to serve all CLEC requests for resale in a nondiscriminatory manner and without any impact on competition. ASI will provide unbundled access to its OSS functionality where they can readily be made available; otherwise, CLECs will utilize manual systems.<sup>13</sup>
53. Similarly, ASI's OSS will not be needed for interconnection with ASI's network. Establishing interconnection points with ASI will be similar to, but somewhat less involved than the process of establishing interconnection points with SWBT, in large part because ASI does not provide transport facilities. All transport services are purchased from the ILEC or other commercial providers of high-speed transport. As with SWBT, individual points of interconnection will be negotiated between the parties and will not require the use of ASI's OSS. However, the transport facilities used for interconnection will be provided by other parties, and CLECs will need to order interconnection transport facilities from SWBT or another party (or self

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<sup>13</sup> ASI will offer carriers access to certain OSS, such as ASI's DSL ordering and provisioning system, that are available to ISPs.

provision). Thus, there will be no need to use ASI's OSS for interconnection with ASI's network.

54. ASI will not have significant volumes of pre-ordering, ordering, or maintenance and repair requests for § 251(c) duties outside of resale and interconnection, and any of these requests will be handled manually, through negotiation between the parties.
55. Sections 12, 13, 14, 25 and 26 of ASI's generic interconnection agreement set forth terms for manual procedures and electronic OSS, pre-ordering, ordering, repair and maintenance available to all CLECs on the same terms. These are the same OSS that are made available to affiliated and unaffiliated ISPs. For resale, ASI will offer the OSS functionalities discussed below.
56. Pre-Ordering. In the pre-ordering process for resale of the "grandfathered" DSL Transport customers and CSAs, ASI will provide CLECs with information necessary to determine a specific customer's serving arrangements, provided that the CLEC has the customer's consent to access the customer's records. CLECs can request a customer service record or CSA contract manually by calling their account manager. In order to comply with the Commission's rules governing protection of Customer Proprietary Network Information ("CPNI"), CLECs will need to have authorization from the customer, and to inform ASI that they have the customers' permission to receive such information. As with SWBT's OSS, ASI's OSS are not intended to be marketing research tools to identify available resale customers; instead, the CLEC must contact the customer, ask the customer the name of his or her service provider, and secure the customer's consent to access the customer's service record. Because the universe of resale customers is so small, ASI should be able to handle all pre-



order inquires for resale of these arrangements on a manual basis.

57. Ordering. For resale of retail DSL Transport services, ASI will provide CLECs the option of accessing ASI's CPSOS system. This system will allow carriers to place pre-order and order transactions electronically. ASI already allows ISPs to access CPSOS in order to place orders with ASI. ASI has a package of training materials that ISPs use to learn how to interface with CPSOS, and ASI will provide CLECs with those training materials. CLECs also will be able to place orders manually by faxing orders to service representatives for ASI. For resale of other services, ASI will offer manual processing of orders. For Frame and ATM Cell Relay services, ASI will use the same ASR manual form previously used by SWBT. ASI has a Toolbar system, similar to SWBT's, which is used by ASI's large customers (i.e., ISPs) to view order status. ASI will permit CLECs to interface with this system. Because this system is similar to SWBT's Toolbar, CLECs should already be familiar with its operation. CLECs also will be able to contact ASI directly via an 800 number to request order status.

58. Maintenance & Repair. The ASI Toolbar system is also used by ASI's large customers to submit requests for repair and maintenance. CLECs may also use the Toolbar to submit maintenance and repair requests.

59. Billing. ASI currently receives billing services from SWBT, and these services are available to all CLECs on the same terms and conditions. Thus, CLECs already have access to these functionalities from SWBT.

***Collocation (§ 251(c)(6))***

60. All of ASI's equipment in the States of Missouri and Arkansas is located on SWBT

premises, in accordance with SWBT's collocation requirements. As such, ASI does not have any premises in which CLECs could seek to collocate their equipment. CLECs and ASI today have the same right of access to space in SWBT's central offices.

61. In the event that ASI acquires premises in Missouri or Arkansas, ASI will make its space available in such premises to requesting CLECs in accordance with the FCC's collocation rules. Accordingly, the ASI-Logix agreement provides that ASI will comply with § 251(c)(6) for any premises that it acquires in Arkansas or Missouri. See Logix Agreement, § 30.

*Notice Of Network Changes (§ 251(c)(5))*

62. ASI agrees to provide reasonable notice consistent with applicable FCC rules of changes in the information necessary for the transmission and routing of services using ASI's network, as well as of any other changes that would affect the interoperability of ASI's network. See Logix Agreement, § 15B.<sup>14</sup>
63. This concludes my affidavit.

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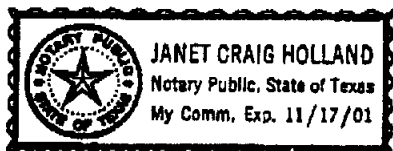
<sup>14</sup> § 251(c)(5) is not part of the 271 Checklist, either as an individual checklist item or as part of checklist item (i), Interconnection. Checklist item (i) refers specifically and exclusively to compliance with the § 251(c)(2) interconnection requirement. As such, this section should not be part of the Commission's 271 review. Nonetheless, the Logix Agreement has the same provisions concerning notice of network changes as the M2A.

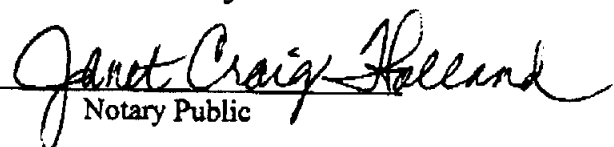
I state under penalty of perjury that the foregoing is true and correct. Executed on August 20, 2001.

  
\_\_\_\_\_  
John S. Habeeb  
Director-Regulatory and Interconnection

STATE OF TEXAS     )  
COUNTY OF BEXAR    )

Subscribed and sworn to before me on this 20<sup>th</sup> day of August 2001.



  
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Notary Public

## **Attachment B**

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554**

In the Matter of	)	
	)	
Joint Application by SBC Communications	)	
Inc., Southwestern Bell Telephone Company,	)	
and Southwestern Bell Communications	)	CC Docket No. 01-194
Services, Inc. d/b/a Southwestern Bell Long	)	
Distance for Provision of In-Region,	)	
InterLATA Services in Arkansas and Missouri	)	

**REPLY AFFIDAVIT OF JOHN S. HABEEB**

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I, John S. Habeeb, of lawful age, being duly sworn, depose and state:

## **I. INTRODUCTION**

1. My name is John S. Habeeb. I am the same John S. Habeeb who previously filed testimony in this docket.
2. In this reply affidavit, I will address comments made by AT&T Corp. ("AT&T"), Association of Communications Enterprises ("ASCENT"), El Paso Networks, LLC and PacWest Telecom, Inc. ("El Paso"), and WorldCom ("Worldcom") concerning ASI's operations and advanced service offerings and SBC's DSL Internet access service.
3. These commentators incorrectly claim that ASI is not meeting its resale obligations under Section 251 and SWBT thereby does not satisfy checklist item 14. Generally, these commentators claim that ASI is providing a retail DSL telecommunications service and is not complying with the obligation to make this retail service available for resale at a wholesale discount. These arguments rest on a mischaracterization of SBC companies' operations and service offerings.

## **II. ASI'S DSL TRANSPORT SERVICE**

4. As an initial matter, Worldcom repeatedly states that ASI does not permit resale of its DSL transport services, implying that ASI is imposing restrictions on the non-discounted resale of its services. Comments of MCI WorldCom, Inc., CC Docket No. 01-194, at 6-7 (FCC Filed Sept. 10, 2001)("Worldcom Comments"). This is untrue. ASI stands ready and willing to resell all of the telecommunications services that it provides, including wholesale telecommunications services, in accordance with Section 251(b)(1).

5. Indeed, ASI's interconnection agreement with LOGIX Communications, Inc. ("LOGIX") (App. E – AR, Tab 25; App. G – MO, Tab 114 to SWBT's initial AR/MO Application), Section 11.A, states: "... the Services that SBC-ASI currently provides or hereafter provides at retail to subscribers who are not telecommunications carriers will be made available for resale to CLEC by SBC-ASI in accordance with the terms and conditions set forth in this Agreement. SBC-ASI shall make its Services available for resale to CLEC on terms and conditions that are reasonable and nondiscriminatory. SBC-ASI will not prohibit, nor impose unreasonable or discriminatory conditions or limitations on the resale of its Services."
6. In addition, after I filed my initial testimony, ASI filed an interstate tariff with the Commission, and that tariff permits resale of ASI's DSL transport services. A copy of the tariff (ASI FCC Tariff No. 1), which became effective September 10, 2001, is provided as Attachment A.<sup>1</sup> Section 6.1.1 of the tariff permits any carrier to resell ASI's DSL transport service:

Wholesale DSL Transport Service is intended primarily for Internet Service Providers (ISPs), but may be purchased by any information Service provider or carrier to connect to their End User for the purposes of providing a retail Service.

7. Unlike Verizon and its advanced services affiliate, Verizon Advanced Data, Inc., SWBT and ASI do not provide a package of DSL and voice telecommunications services over a single line to end user customers at retail. In fact, ASI sells service to a different customer—the ISP—than SWBT, the voice provider. As a result, CLECs

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<sup>1</sup> ASI believes that it is a non-dominant carrier, and it filed the tariff out of an abundance of caution, to avoid any dispute concerning the proper regulatory treatment of its services after the decision of the United States Circuit Court of Appeals for the District of Columbia Circuit in *Association of Comm. Ent. v. FCC*, 235 F.3d 662 (D.C. Cir. 2001). See Transmittal Letter to ASI FCC Tariff No. 1, a copy of which is provided in Attachment A.

do not need to be able to resell voice and DSL telecommunications services together to retail end users in order to compete with the offerings of the SBC companies.

Accordingly, SBC companies should not be subject to the same obligation as that imposed on Verizon to resell DSL services over ILEC-resold voice lines.

8. It would be difficult for ASI to offer resale of a new service – DSL transport over SBC ILEC resold voice lines – where it does not provide service today. Once SBC became legally obligated to provide advanced services through a fully separate affiliate under the SBC/Ameritech Merger Conditions, it created ASI. ASI essentially made two choices in developing its business plan. First, ASI determined that it would provide DSL Transport predominantly as a wholesale provider to ISPs and that it would provision DSL utilizing line sharing. Hence, ASI has built its provisioning and operational support systems and process flows for DSL Transport using the line sharing product provided by ILECs. However, SWBT does not provide the HFPL UNE over resold voice loops. As a result, ASI does not offer this product and simply does not have the systems and processes in place to resell DSL transport over loops that have ILEC-resold voice service.
9. In any event, it appears unlikely that there would be any significant demand for resale of ASI services without a discount under Section 251(b)(1), because CLECs would purchase the service at the same price that ASI would sell to other customers (wholesale or retail). No CLEC has claimed that it would purchase ASI's DSL service under Section 251(b)(1).

### **III. SBC's RETAIL DSL INTERNET ACCESS SERVICE**

10. Worldcom and other commentators contend that ASI is not complying with the Section 251(c)(4) obligation to resell DSL Transport services at a wholesale discount.



As I explained in my initial affidavit and above, ASI's business plan is concentrated significantly on the provision of wholesale DSL Transport to ISPs, including both affiliated and non-affiliated ISPs, and these wholesale offerings are not subject to resale at a wholesale discount. However, ASI will resell at a wholesale discount those telecommunications services it does offer on a retail basis.

11. Worldcom, AT&T, and ASCENT contend that SBC is providing DSL Transport at retail to end users when ASI sells DSL Transport to an affiliated ISP, which in turn provides DSL Internet Access service to end users at retail. However, as I explained in my initial affidavit, DSL Internet Access service is not a telecommunications service and as such is not subject to resale under Section 251(c)(4). In fact, these carriers' comments underscore the fact that SBC's sole mass market retail DSL product offering – DSL Internet Access service – is an information service, and not a telecommunications service.
12. For example, both Worldcom (Worldcom Comments at 3) and AT&T, (Comments of AT&T, CC Docket No. 01-194, at 62 (FCC Filed Sept. 10, 2001)(“AT&T Comments”), claim that SBC's investor materials disclose the total number of wholesale and retail DSL transport lines, and state that an SBC affiliate provides Internet Access service on many of those lines. These statements clearly demonstrate two things: (a) that SBC provides wholesale DSL Transport service to ISPs, including affiliated and non-affiliated ISPs, and (b) that SBC provides retail DSL Internet Access service to end users.
13. Worldcom (Worldcom Comments at 3-4) complains that SWBT's web site does not advise customers that they can order ASI's DSL Transport with their choice of ISP.

That is because they cannot – SBC does not sell DSL transport service to retail end user customers. SBC is willing to provide DSL transport to any ISP on a wholesale basis, however, and the customer thus may purchase DSL Internet Access from its chosen ISP. That ISP may choose to purchase ASI's DSL transport service and package it with Internet access as a component of its retail information service offering. AT&T's witness Mr. all but concedes that the ambiguities that previously existed on SWBT's web site have been eliminated (AT&T Comments, Declaration of Scott L. Finney ¶¶ 12-16).

14. Worldcom (Worldcom Comments at 4-5) complains about SBC's inbound telemarketing and customer service line, stating that recorded menu options on the 1-800 number do not inform the customer that SBC provides DSL Internet service through Southwestern Bell Internet Services. However, the recorded menu options are introductory only. A caller interested in purchasing DSL will be routed through these menus to a customer service representative, who is instructed to sell only SBC's DSL Internet Access service, not DSL Transport. If the caller states that he or she wants to obtain Internet service from another ISP, the customer service representative is instructed to advise the caller to contact his or her chosen ISP.

15. AT&T, ASCENT, and Worldcom suggest that SBC somehow is improperly attempting to use its corporate affiliate structure to avoid reselling DSL Transport service, but that misses the point entirely. The DSL Transport service sold by SBC companies is not available for resale at a wholesale discount under Section 251(c)(4) because it is not a telecommunications service that is being sold at retail to subscribers, not because of any corporate affiliate relationships. SBC companies

combine the DSL Transport with Internet access and sell the resulting information at retail to subscribers.

16. To that end, SBC's product offerings are significantly different than Verizon's product offerings in Connecticut – which commentators fail to acknowledge (see ASCENT Comments at 9; El Paso Comments at 28; AT&T Comments at 62-64). Verizon offers a DSL Transport service at retail to subscribers on a mass market basis; SBC does not.
17. These commentators incorrectly claim that ASI is “converting” or “modifying” its service offerings in order to avoid its resale obligations. (See, e.g., ASCENT Comments at 6-7; El Paso Comments at 27; AT&T Comments at 61). But ASI has long focused its business on providing DSL Transport services at wholesale to ISPs rather than providing DSL Transport service at retail to end users.

#### **IV. ASI'S WHOLESALE DSL TRANSPORT SERVICE**

18. ASCENT and AT&T correctly note that SWBT is discontinuing its “split billing” option. As I explained in my opening affidavit, under split billing ASI would bill the ISP's end user customer for DSL Transport rather than the ISP customer. ASI offered split billing to accommodate its wholesale ISP customers, not end users. In fact, ASI charged the same (i.e., wholesale) price for DSL Transport whether it split billed or not. As explained in my initial affidavit, ASI is no longer accepting orders involving split billing from ISPs, and has informed the ISPs that the existing end users will be converted from split billing to consolidated billing by December 31, 2001.
19. AT&T claims that ASI should be deemed to be providing a retail service because it has not completely terminated billing of all split billed customers (AT&T Comments

at 61). However, even if the split billing arrangement were to be deemed a retail offering, it is not a current service offering.<sup>2</sup> Moreover, existing end users will be grandfathered in this billing option only up to December 31, 2001 (at the latest; some likely will be converted before that date). To eliminate any doubt about whether ASI complies with its obligations under section 254(c)(4), for as long as ASI bills these “grandfathered” end users under the split billing arrangement, ASI will make available to CLECs at its wholesale discount the DSL Transport service for resale to those specific end users.

20. AT&T incorrectly claims that ASI stopped offering split billing solely to reduce competition (AT&T Comments at 64). As I have previously explained, ASI never intended to enter the mass market for DSL Transport service, and it offered split billing only as an option for its wholesale customers. ASI discontinued split billing to avoid any claim that the option created a retail relationship between ASI and retail mass market customers.

21. AT&T also complains that split billing is being discontinued for unaffiliated ISPs but that direct billing will still be provided to SBIS (AT&T Comments at 65). That is a mischaracterization. SWBT performs the billing and collection on behalf of SBIS, and it does so under the terms and conditions of a standard billing and collection agreement. Those same terms and conditions are available on a non-discriminatory basis to any CLEC or ISP who wishes to have SWBT perform billing and collection for their services.

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<sup>2</sup> Contrary to AT&T's assertion (AT&T Comments at 63, n. 82), ASI's discontinuance of the split billing option and modifications to its website was not a discontinuance of an ASI service. Although ASI eliminated the reference to “DSL Transport Only” on the website and has taken other steps to discontinue

22. AT&T complains that one unaffiliated ISP has not changed its website to explain that SBC no longer bills its end users for DSL transport service (AT&T Comments at 61; Finney Declaration ¶¶ 19-20). Of course, SBC does not have any control over the information other companies put on their web sites. However, SBC no longer takes split billing orders for DSL Transport service from that ISP or any other ISP in the SWBT region.

23. WorldCom provides a copy of a complaint made to the California Public Utilities Commission by the California Internet Service Provider Industry Association (“CISPA”) concerning ASI’s proposed contract with ISPs, claiming that it “shows that SBC remains the de facto provider of DSL services to end users.” This complaint is irrelevant to this proceeding. After ASI filed its federal tariff, ASI withdrew the proposed contract and CISPA withdrew its request for immediate injunctive relief, conceding “[b]ecause the FCC Tariff affords California ISPs a means of obtaining DSL Transport service without the need for signing the ‘General Services Agreement’ previously presented by SBC-ASI, California ISPs do not at this time face the prospect of losing access to DSL Transport services if they do not sign this Agreement.” A copy of CISPA’s motion to withdraw is provided as Attachment B.

24. In any event, Worldcom is wrong in contending that ASI is using the Broadband Capabilities Gateway (“BCG”) network architecture to provide retail services to end users, and that ASI will control access to end user customers using this technology. BCG is a technology that ASI has not yet installed for commercial services, so it is

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split billing, ASI continues to offer the same wholesale DSL Transport service to ISPs that it previously offered.

not even part of ASI's current commercial offerings. ASI is investigating whether it may offer BCG-based multiple virtual sessions at some time in the future to multiple information content providers, which in turn would sell their services to end user customers. Under such an arrangement, ASI would continue to sell all broadband transport telecommunications services to information content providers at wholesale, and those providers would use this bandwidth to provide services to end users at retail.

25. AT&T and WorldCom also complain about the terms and conditions of ASI's agreements with the ISPs as embodied in the DSL Addendum and claim that ASI is not offering DSL Transport on a non-discriminatory basis to all ISPs (AT&T Comments at 66; Worldcom Comments at 5-6). As mentioned earlier, ASI has on file with the FCC an Advanced Services tariff which contains rates, terms and conditions for DSL Transport made available to all ISPs, both affiliated and unaffiliated, on a non-discriminatory basis. SBIS purchases DSL Transport under this tariff on the same terms and conditions as other ISPs.

## **V. OSS**

26. AT&T also asserts that ASI is improperly attempting to limit its obligation to provide nondiscriminatory access to its OSS because CLECs will be required to use ASI's unique OSS to order services rather than being able to do so through SWBT's OSS, and that ASI's OSS will be available only for certain services (AT&T Comments at 68). As I explained in my previous affidavit, ASI's electronic Complex Products Service Order System ("CPSOS"), will be available for the processing of CLEC DSL Transport orders. ISPs use this system to order DSL transport, and this same system will be made available to CLECs for ordering DSL for resale.

27. The process of ordering other complex ASI services, notably Frame Relay and ATM Cell Relay, requires manual order entry; thus, no mechanized OSS is available.
28. To date, ASI has not received any orders from a CLEC for resale of its services. However, ASI received and successfully provisioned, in excess of 66,000 orders from ISPs using the CPSOS system during the period March 1 to August 31, 2001.
29. In the DSL workshops held before the Texas PUC staff in 2001, and in the 13-state Business Rules Plan of Record CLEC Collaboratives held in Dallas, neither AT&T nor any other CLEC raised an issue about the adequacy of ASI's CPSOS or the manual process used for ordering non-DSL advanced services from ASI.

## **VI. THE LOGIX AGREEMENT**

30. ASI's recently-filed interstate tariff gives CLECs an additional choice for purchasing DSL Transport and other services from ASI. For its Section 251 offerings, ASI continues to honor its interconnection agreements with CLECs, such as the LOGIX Agreements in Arkansas and Missouri (referenced in my initial affidavit). A CLEC can enter into an interconnection agreement with ASI, either by opting into the LOGIX Agreement or another approved agreement or by negotiating its own agreement, and purchase DSL Transport under the agreement. Or, whether or not the CLEC has entered into an interconnection agreement with ASI, it can purchase DSL Transport from ASI under ASI FCC Tariff No.1.
31. AT&T makes numerous complaints about certain terms and conditions in the ASI/LOGIX Agreement (AT&T Comments at 67-68). It is not clear why AT&T is raising these points, since it has not sought to negotiate an interconnection agreement with ASI. ASI has successfully negotiated more than 30 interconnection agreements throughout its thirteen-state territory (three in Arkansas, three in Missouri). If AT&T

wants to request negotiation of an interconnection agreement with ASI, ASI would be willing to engage in good faith negotiations with AT&T, just as it has with other CLECs, and would negotiate all of the points raised in its comments. In any event, AT&T's complaints about the ASI/LOGIX Agreement are entirely unfounded, as described below.

32. CSAs. AT&T acknowledges that in the ASI/LOGIX Agreement ASI agrees to offer CSAs to any "similarly situated" customer, but complains that the ASI/LOGIX agreement does not include a definition for the term "similarly situated" (AT&T Comments at 67). AT&T does not explain why a definition is needed for such a common term, and AT&T provides no evidence that ASI is construing the term "similarly situated" unreasonably or in any manner inconsistent with Commission requirements. However, the "similarly situated" standard is directly out of the FCC's Second Louisiana 271 Order.<sup>3</sup> Similarly, AT&T complains that the ASI/LOGIX agreement fails to specify that a reseller may aggregate the volumes of its individual customers to meet the volume requirements of a particular CSA (AT&T Comments at 67). This is also addressed by the "similarly situated" standard.

33. Termination Liability. AT&T argues (AT&T Comments at 68) that the LOGIX Agreement provides that an end-user under a CSA is subject to termination liability for early termination. That is wrong; the LOGIX agreement does not address early termination liability for CSA customers. ASI does have early termination liability provisions in its interstate tariff and CSA contracts, and these generally are one-half

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<sup>3</sup> *Application of BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc. for Provision of In-Region InterLATA Services in Louisiana*, Memorandum Opinion and Order ¶ 317, 13 FCC Rcd 20599 (1998) ("Second Louisiana 271 Order") ("We note that certain groups of end users



of the charges for the remaining term of the contract. See, e.g., ASI FCC Tariff No. 1, § 3.4.4.B. As such, the early termination charges are fair and reasonable.

34. Limitation of Liability. AT&T takes the position that the limitation of liability clause in Section 3 of the LOGIX Agreement is unreasonable in that, if ASI were to improperly install or maintain a service for the CLEC, the CLEC's recovery for the improper installation or maintenance would be "limited to a refund of its payment to ASI," with no recovery for consequential damages such as lost revenue or damage to reputation (AT&T Comments at 68). However, limitation of liability provisions that limit a party's damages and exclude all consequential damages are common in the industry and not unreasonable. For instance, Section 13.1 of SBC's 13 State Generic Interconnection Agreement, provides that a party's liability "shall not exceed in total the amount [which the other Party] has charged or would have charged ... for the affected ... service(s) that were not performed or were improperly performed." Likewise, Section 13.4 expressly excludes liability for consequential damages.


## VII. CONCLUSION

35. This concludes my affidavit.

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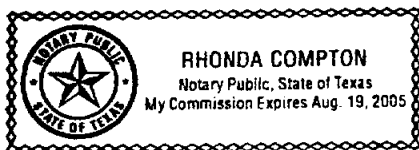
might constitute an aggregation that is similarly situated to the original CSA customer and, thus, BellSouth would be obligated to allow the reseller to aggregate the volume of such end users under the CSA.").

I declare under penalty of perjury that the foregoing is true and correct.

  
\_\_\_\_\_  
JOHN S. HABEEB  
DIRECTOR-REGULATORY

Subscribed and sworn before me on this 3<sup>rd</sup> day of October, 2001.

  
\_\_\_\_\_  
NOTARY PUBLIC



## **Attachment C**

**FILED<sup>3</sup>**

MAR 09 2001

Missouri Public  
Service Commission

**INTERCONNECTION AGREEMENT (MISSOURI)**

**BETWEEN**

**SBC ADVANCED SOLUTIONS, INC.**

**AND**

**LOGIX COMMUNICATIONS CORPORATION**

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## INTERCONNECTION AGREEMENT (MISSOURI)

THIS INTERCONNECTION AGREEMENT - MISSOURI is between SBC Advanced Solutions, Inc. having a principal place of business at 300 Convent Street, 18<sup>th</sup> Floor, San Antonio, Texas 78205, on behalf of itself and its affiliated companies, ("SBC-ASI") and Logix Communications Corporation ("CLEC")(SBC-ASI and CLEC are sometimes referred to hereinafter as "Party" or "Parties").

WHEREAS, CLEC desires SBC-ASI to provide high speed data services (collectively "Services") under certain prices, terms and conditions; and

WHEREAS, CLEC and SBC-ASI desire to enter into an Interconnection Agreement covering the installation, operation and maintenance of such Services ("Agreement"); and

WHEREAS, pursuant to the Telecommunications Act of 1996, (the "Act"), the Parties wish to establish terms for the resale of SBC-ASI Services and for the provision by SBC-ASI of Interconnection as designated in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, SBC-ASI and CLEC agree as follows:

### GENERAL TERMS AND CONDITIONS

1. SCOPE OF THE AGREEMENT. This Agreement is intended to satisfy SBC's obligations under section 251(c) of the Act as interpreted by the D.C. Court of Appeals in *Association of Communications Enterprises v. FCC*, slip op., No. 99-1441 (D.C. Circuit, Jan. 9, 2001), modified slip op. (Jan. 18, 2001) (the "ASCENT Decision") in anticipation of the Federal Communications Commission ("FCC") issuing an order to address this issue as discussed in Footnote 768 of the Kansas/Oklahoma 271 Order, FCC 01-29 released January 22, 2001. In the event the FCC issues a decision that imposes requirements affecting the terms and conditions contained in this Agreement, or that the terms and conditions contained in this Agreement do not fulfill SBC's obligations under the ASCENT Decision, either Party may exercise its rights under the Intervening Law provisions set forth in section 1D of this Agreement.
  - A. Term. This Agreement including any attachments, schedules and addenda sets forth the complete terms and conditions applicable to the provision of Services by SBC-ASI to CLEC, and supersedes any and all prior agreements, arrangements, representations, or understandings relating to the subject matter hereof. The initial term of this Agreement is one (1) year, unless sooner terminated as provided herein. This Agreement is effective ten (10) calendar days after the Commission approves the Agreement under Section 252(e) of the Act, or absent such Commission approval, the date the Agreement is deemed approved under Section 252(e)(4) of the Act.

B. Cancellation, Termination and Default.

- (1) If CLEC cancels the Service before installation, CLEC will pay all costs, fees and expenses incurred or expended by SBC-ASI in connection with providing the Service including, but not limited to, those paid to third parties.
- (2) CLEC may terminate this Agreement upon payment of the termination charges, if any, set forth in this Agreement.
- (3) Subject to the conditions specifically provided for failure to pay in subsection 2H, SBC-ASI may terminate this Agreement upon thirty (30) calendar days written notice if CLEC fails to perform or observe any material term or condition of this Agreement and such failure is not remedied within thirty (30) calendar days after SBC-ASI's notice.
- (4) This Agreement is subject to all applicable laws, regulations, rules and orders. SBC-ASI and the Services may be regulated by certain rules, regulations, and orders of state or federal regulatory agencies or may be subject to certain requirements as set forth in the Act. If this Agreement, or any part thereof, is subsequently deemed, or SBC-ASI, in good faith, at its sole discretion, believes this Agreement, or any part thereof, to be in conflict with any such rules, regulations or orders, SBC-ASI may to that extent terminate or modify this Agreement without liability.
- (5) CLEC may terminate this Agreement without payment of termination charges if, upon delivery to SBC-ASI of a thirty (30) calendar days written notice setting forth the reason(s) for termination, SBC-ASI fails to perform or observe any material term or condition of this Agreement and such failure is not remedied within thirty (30) calendar days after SBC-ASI's receipt of CLEC's breach notice.
- (6) If this Agreement is terminated under any provision set forth above, SBC-ASI and CLEC agree to cooperate in an orderly and efficient transition to CLEC or another vendor, as applicable.
- (7) Subject to the conditions specifically provided for failure to pay in subsection 2H, in the event CLEC defaults in its obligation to make timely payments to SBC-ASI or otherwise defaults in any material obligation hereunder, SBC-ASI may, in addition to other remedies, discontinue work on any Service orders in process and may refuse to accept any new orders for Service. In addition, SBC-ASI may disconnect any existing Service connections that are in default for non-payment and CLEC shall cooperate with SBC-ASI in this disconnection process to minimize the impact on CLEC's Customers.

- C. Negotiation of Successor Agreement. If either Party desires to negotiate a successor agreement to this Agreement, such Party must provide the other Party with a written request to negotiate such successor agreement ("Request to Negotiate") not later than one hundred-eighty (180) calendar days prior to the expiration of this



Agreement. A Request to Negotiate does not activate the negotiation timeframe set forth in this Agreement, nor does it shorten the life of this Agreement. The noticing Party will delineate the items desired to be negotiated. Not later than thirty (30) calendar days from receipt of said Request to Negotiate, the receiving Party will notify the sending Party of additional items desired to be negotiated, if any. The Parties will begin negotiations not later than one hundred thirty-five (135) calendar days prior to expiration of this Agreement.

- D. Intervening Law. In the event that any of the rates, terms and/or conditions herein, or any of the laws or regulations that were the basis or rationale for such rates, terms and/or conditions in the Agreement, are invalidated, modified or stayed by any action of any state or federal regulatory or legislative bodies or courts of competent jurisdiction, including but not limited to any action altering the existence or scope of any 47 U.S.C. Section 251 obligation on SBC-ASI (e.g. the ASCENT Decision) and any decision by the Eighth Circuit relating to any of the costing/pricing rules adopted by the FCC in its First Report and Order, *In re: Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 11 FCC Rcd 15499 (1996)(e.g., Section 51.501, et seq.), upon review and remand from the United States Supreme Court, in *AT&T Corp. v. Iowa Utilities Bd.*, 119 S. Ct. 721 (1999) or *Ameritech v. FCC*, No. 98-1381, 1999 WL 116994, 1999 Lexis 3671 (June 1, 1999), the affected provision shall be immediately invalidated, modified, or stayed, consistent with the action of the legislative body, court, or regulatory agency upon the written request of either Party. In such event, the Parties shall expend diligent efforts to arrive at an agreement regarding the appropriate conforming modifications to the Agreement. If negotiations fail, disputes between the Parties concerning the interpretation of the actions required or provisions affected by such governmental actions shall be resolved pursuant to the dispute resolution process provided for in this Agreement. The Parties acknowledge and agree that by executing this Agreement, neither Party waives any of its rights, remedies, or arguments with respect to such decisions and any remand thereof, including its right to seek legal review or a stay pending appeal of such decisions or its rights under this Intervening Law paragraph.
- E. Assignment. Neither Party may assign or otherwise transfer its rights or obligations under this Agreement, except with the prior written consent of the other Party hereto, which consent will not be unreasonably withheld; provided, that SBC-ASI may assign its rights and benefits and delegate its duties and obligations under this Agreement to an affiliate of SBC-ASI without the consent of CLEC. Nothing in this section is intended to impair the right of either Party to utilize subcontractors.

## 2. BILLING AND TERMS OF PAYMENT

- A. SBC-ASI or its billing agent will bill CLEC and CLEC will pay to SBC-ASI or its billing agent on a monthly basis the charges set forth in this Agreement. The charges will commence on the date Service is made available by SBC-ASI under the applicable Agreement. If the CLEC or CLEC's Customer is not ready for the

Service on such date, then the SBC-ASI billing cycle will commence at the same time as billing to SBC-ASI from SBC-ASI's vendors commence.

- B. Charges referenced in subsection A above are due on the date specified on the bill ("Payment Date").
- C. A late payment charge shall be assessed by SBC-ASI or its billing agent on any charges not received by the Payment Date. The late payment charge shall be calculated according to the prevailing collections policy in place by SBC-ASI or its billing agent, based on per month invoiced charges or portion thereof, for the period from the Payment Date until the payment is received, but in no event will such charge exceed the maximum amount allowed by law. If this charge would exceed the maximum allowable charge in any jurisdiction where the Services have been provided but for which payment has not been received, the late payment charge shall be calculated at the maximum allowed by such jurisdiction.
- D. If a billing dispute is resolved in favor of CLEC, any billed charges and late payment charges collected on the disputed amount will be credited to CLEC on CLEC's bill.
- E. If a billing dispute is resolved in favor of SBC-ASI, any payments withheld pending settlement of the dispute shall be subject to the late payment charges set forth above.
- F. Adjustments for the quantities of Services established or discontinued in any billing period beyond the minimum period of one (1) month will be prorated.

G. Taxes

- (1) With respect to any purchase of Service under this Agreement, if any Federal, state or local government tax, fee, surcharge, or other tax-like charge (a "Tax") is required or permitted by applicable law, ordinance or tariff to be collected from a purchasing Party by the providing Party, then (i) the providing Party will bill, as a separately stated item, the purchasing Party for such Tax, (ii) the purchasing Party will timely remit such Tax to the providing Party, and (iii) the providing Party will remit such collected Tax to the applicable taxing authority.
- (2) If the providing Party does not collect a Tax because the purchasing Party asserts that it is not responsible for the Tax, or is otherwise excepted from the obligation which is later determined by formal action to be wrong then, as between the providing Party and the purchasing Party, the purchasing Party will be liable for such uncollected Tax and any interest due and/or penalty assessed on the uncollected Tax by the applicable taxing authority or governmental entity.
- (3) If either Party is audited by a taxing authority or other governmental entity the other Party agrees to reasonably cooperate with the Party being audited in order to respond to any audit inquiries in a proper and timely manner so that the audit and/or any resulting controversy may be resolved expeditiously.

- (4) If applicable law excludes or exempts a purchase of Services under this Agreement from a Tax, and if such applicable law also provides an exemption procedure, such as an exemption certificate requirement, then, if the purchasing Party complies with such procedure, the providing Party, subject to Section 2.G(2), will not collect such Tax during the effective period of the exemption. Such exemption will be effective upon receipt of the exemption certificate or affidavit.
- (5) If applicable law excludes or exempts a purchase of Services under this Agreement from a Tax, but does not also provide an exemption procedure, then the providing Party will not collect such Tax if the purchasing Party (i) furnishes the providing Party with a letter signed by an officer of the purchasing Party claiming an exemption and identifying the applicable law which allows such exemption, and (ii) supplies the providing Party with an indemnification agreement, reasonably acceptable to the providing Party, which holds the providing Party harmless on an after-tax basis with respect to forbearing to collect such Tax.
- (6) With respect to any Tax or Tax controversy covered by this section, the purchasing Party will be entitled to contest, pursuant to applicable law, and at its own expense, any Tax that it is ultimately obligated to pay. The purchasing Party will be entitled to the benefit of any refund or recovery resulting from such a contest. The providing Party will cooperate in any such contest.
- (7) Failure to include Taxes on an invoice or to state a Tax separately shall not impair the obligation of the purchasing Party to pay any Tax. Nothing shall prevent the providing Party from paying any Tax to the appropriate taxing authority prior to the time: (1) it bills the purchasing Party for such Tax or (2) it collects the Tax from the purchasing Party. Notwithstanding anything in this Agreement to the contrary, the purchasing Party shall be liable for and the provisioning Party may collect Taxes which were assessed by or paid to an appropriate taxing authority within the statute of limitations period but not included on an invoice within four (4) years after the Tax otherwise was owed or due.

#### H. Failure to Pay

- (1) Failure of CLEC to pay charges may be grounds for termination of this Agreement. If CLEC fails to pay when due, any and all charges billed to them under this Agreement ("Unpaid Charges") and any portion of such charges remain unpaid more than fifteen (15) calendar days after the Payment Date of such Unpaid Charges, SBC-ASI will notify CLEC in writing that in order to avoid having service disconnected, CLEC must remit all Unpaid Charges, whether disputed or undisputed, to SBC-ASI or its billing agent within fifteen (15) calendar days after receipt of said notice. Disputes hereunder will be resolved in accordance with the Dispute Resolution Procedures set forth in Section 8 of this Agreement.

- (2) If CLEC charges remain unpaid and undisputed thirty (30) calendar days past the Payment Date of the Unpaid Charges as described above, CLEC will, at its sole expense, notify its Customers that their Service may be disconnected because of CLEC's failure to pay Unpaid Charges, and that CLEC's Customers must select a new Service provider within fifteen (15) calendar days.
- (3) If any CLEC charges remain unpaid and undisputed forty-five (45) calendar days past the Payment Date, SBC-ASI will disconnect Service to CLEC.
- (4) SBC-ASI may discontinue service to CLEC upon failure to pay Unpaid Charges as provided in this section, and will have no liability to CLEC in the event of such disconnection.
- (5) After disconnect procedures have begun, SBC-ASI will not accept service orders from CLEC until all Unpaid Charges are paid. SBC-ASI will have the right to require a deposit equal to one (1) month's charges (based on the highest previous month of service from SBC-ASI) prior to resuming service to CLEC after disconnect for nonpayment.
- (6) Beyond the specifically set out limitations in this section, nothing herein will be interpreted to obligate SBC-ASI to continue to provide service to any such CLEC Customer or to limit any and all disconnection rights SBC-ASI may have with regard to such CLEC customers.

3. WARRANTY, MAINTENANCE AND LIMITATION OF LIABILITY

- A. **SBC-ASI WARRANTS THAT THE SERVICE WILL BE INSTALLED AND MAINTAINED IN GOOD WORKING ORDER AND THAT THE SERVICE WILL PERFORM SUBSTANTIALLY IN ACCORDANCE WITH THE REQUIREMENTS OF THIS AGREEMENT.**
- B. **THIS WARRANTY DOES NOT COVER REPAIRS FOR DAMAGES CAUSED BY ANY NEGLIGENCE, ACT OR OMISSION OF CLEC OR ITS CUSTOMER OR THEIR RESPECTIVE OFFICERS, AGENTS OR EMPLOYEES. EXCEPT AS SPECIFICALLY PROVIDED FOR IN SUBSECTION A ABOVE WITH RESPECT TO SERVICE, SBC-ASI EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES WITH RESPECT TO THE SERVICE, INTERCONNECTION, OR NETWORK ELEMENTS, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.**
- C. **SBC-ASI'S SOLE LIABILITY, WHETHER IN CONTRACT OR IN TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY), FOR ANY FAILURE, DEFECT, ERROR, LOSS, OR OMISSION IN THE PROVISION OF THE SERVICE ("SERVICE INTERRUPTION"), INTERCONNECTION, OR NETWORK ELEMENTS, OF ANY KIND INCLUDING, BUT NOT LIMITED TO, SERVICE INTERRUPTION**

**ALLEGED TO BE CAUSED BY DEFECTIVE CLEC EQUIPMENT OR ITS CUSTOMER OWNED OR PROVIDED EQUIPMENT OR CUSTOMER PREMISES EQUIPMENT ("CUSTOMER EQUIPMENT"), EVEN IF PROVIDED OR INSTALLED BY SBC-ASI, IS LIMITED TO REFUND OF THE PROPORTIONATE CHARGE FOR THE PERIOD DURING WHICH THE SERVICE WAS AFFECTED.**

**D. IN NO EVENT WILL SBC-ASI BE LIABLE TO CLEC, UNDER ANY CIRCUMSTANCES, FOR INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES OF ANY KIND WHATSOEVER INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, LOST REVENUE, FAILURE TO REALIZE EXPECTED SAVINGS AND LOSS OF DATA, REGARDLESS OF THE FORM OF ACTION AND WHETHER OR NOT SUCH DAMAGES ARE FORESEEABLE.**

**E. SBC-ASI RESERVES THE RIGHT TO TEMPORARILY SUSPEND SERVICE TO ALLOW FOR MAINTENANCE.**

**4. INDEMNITY**

A. As to the Services, CLEC shall indemnify, defend and hold harmless SBC-ASI, its parents, affiliates and subsidiaries, and their respective, officers, directors, employees, agents, successors and assigns from and against any claim, loss or damage involving:

1. Claims for libel, slander, invasion of privacy, or infringement of copyright arising from CLEC's own communications;
2. Claims for patent infringement arising from CLEC's acts of combining or using the Services in connection with Customer Equipment; or
3. All other claims arising out of any act or omission of CLEC.

B. As to the Services, SBC-ASI shall indemnify, defend and hold harmless CLEC from and against:

1. Any claim or threat of claim brought by a third party which arises out of any claim or suit for direct damages or relief on account of injury to or death of any person or damage to tangible personal or real property caused solely by SBC-ASI's negligence or willful misconduct in the course of SBC-ASI's performance under this Agreement.
2. Any claim or threat of claim brought by any third party alleging the Services infringe such party's patents, trademarks or copyright ("Intellectual Property"), provided that CLEC: (a) followed SBC-ASI's reasonable instructions for use of any Intellectual Property associated with the Services; (b) did not modify the Services; (c) notifies SBC-ASI promptly and in writing of any such claims; and (d) cooperates with and permits SBC-ASI to

control the defense, settlement or other handling of such claim or threatened claim. SBC-ASI shall not be responsible for any claims resulting from CLEC's combination of the Services with other products or services or Customer Equipment. If one (1) or more of the Services shall be found not to conform to any Intellectual Property warranty, CLEC's sole remedy against SBC-ASI shall be, at SBC-ASI's option, for SBC-ASI to: (a) defend CLEC against such infringement claim; or (b) to substitute other functionally equivalent SBC-ASI services.

- C. CLEC acknowledges that its right under this Agreement to interconnect with SBC-ASI's network may be subject to or limited by Intellectual Property rights (including without limitation, patent, copyright, trade secret, trade mark, service mark, trade name and trade dress rights) and contract rights of third parties.

## 5. FORCE MAJEURE

- A. SBC-ASI will not be liable for any loss or damage resulting from any cause beyond SBC-ASI's reasonable control, such as, but not limited to, fire, explosion, lightning, flood, earthquake, power surges or failures, strikes or labor disputes, floods, storms, tornadoes, acts of war, civil disturbances, acts of civil or military authorities or the public enemy, delays caused by CLEC, Customer Equipment or CLEC service or equipment vendors or any other cause beyond SBC-ASI's control.
- B. On the occurrence of any such event and to the extent such occurrence interferes with SBC-ASI's performance of this Agreement, SBC-ASI will be excused from performance during the period of such interference, provided that SBC-ASI uses all reasonable efforts available to SBC-ASI to avoid or remove such causes of nonperformance.

## 6. AGENCY

- A. CLEC hereby authorizes SBC-ASI to act as CLEC's agent in interactions with other carrier(s), vendor(s), and service provider(s) involving the following activities:
  - (1) coordination of orders for installation, moves, and changes of services provided by other carrier(s), vendor(s), and service provider(s);
  - (2) coordination of end-to-end testing of circuits with other carrier(s), vendor(s) and service provider(s);
  - (3) coordination of service restoration with other carrier(s), vendor(s) and service provider(s) in the event of an outage.
- B. CLEC also authorizes SBC-ASI to act as CLEC's agent in obtaining from other carrier(s), vendor(s), and service provider(s) the service and account records that pertain to these activities.

- C. CLEC may revoke this designation of agency at any time upon written notice to SBC-ASI.

## 7. CONFIDENTIALITY AND PROPRIETARY INFORMATION

- A. For the purposes of this Agreement, "Confidential Information" means confidential or proprietary technical or business information given by the disclosing Party ("Discloser") to the receiving Party ("Recipient"). All information which is disclosed by one (1) Party to the other in connection with this Agreement, during negotiations and the term of this Agreement, will automatically be deemed proprietary to the Discloser and subject to this Agreement, unless otherwise confirmed in writing by the Discloser. In addition, by way of example and not limitation, all orders placed by CLEC pursuant to this Agreement, and information that would constitute Customer Proprietary Network Information ("CPNI") of CLEC's Customers pursuant to the Act and the rules and regulations of the Federal Communications Commission ("FCC"), whether disclosed by CLEC to SBC-ASI or otherwise acquired by SBC-ASI in the course of the performance of this Agreement, will be deemed Confidential Information of CLEC for all purposes under this Agreement.
- B. For a period of five (5) years from the receipt of Confidential Information from the Discloser, except as otherwise specified in this Agreement, the Recipient agrees (1) to use it only for the purpose of performing under this Agreement, (2) to hold it in confidence and disclose it to no one other than its employees having a need to know for the purpose of performing under this Agreement, and (3) to safeguard it from unauthorized use or disclosure using at least the same degree of care with which the Recipient safeguards its own Confidential Information. If the Recipient wishes to disclose the Discloser's Confidential Information to a third party agent or consultant, such disclosure must be agreed to in writing by the Discloser, and the agent or consultant must have executed a written agreement of nondisclosure and nonuse comparable in scope to the terms of this Section.
- C. The Recipient may make copies of Confidential Information only as reasonably necessary to perform its obligations under this Agreement. All such copies will be subject to the same restrictions and protections as the original and will bear the same copyright and proprietary rights notices as are contained on the original.
- D. The Recipient agrees to return all Confidential Information in tangible form received from the Discloser, including any copies made by the Recipient within thirty (30) calendar days after a written request is delivered to the Recipient, or to destroy all such Confidential Information if directed to do so by Discloser except for Confidential Information that the Recipient reasonably requires to perform its obligations under this Agreement. If either Party loses or makes an unauthorized disclosure of the other Party's Confidential Information, it will notify such other Party immediately and use reasonable efforts to retrieve the lost or wrongfully disclosed information.

- E. The Recipient will have no obligation to safeguard Confidential Information: (1) which was in the possession of the Recipient free of restriction prior to its receipt from the Discloser, (2) after it becomes publicly known or available through no breach of this Agreement by the Recipient; (3) after it is rightfully acquired by the Recipient free of restrictions on its disclosure; or (4) after it is independently developed by personnel of the Recipient to whom the Discloser's Confidential Information had not been previously disclosed. In addition, either Party will have the right to disclose Confidential Information to any mediator, arbitrator, state, or federal regulatory body, or a court in the conduct of any mediation, arbitration or approval of this Agreement, so long as, in the absence of an applicable protective order, the Discloser has been promptly notified by the Recipient and so long as the Recipient undertakes all lawful measures to avoid disclosing such information until Discloser has had reasonable time to negotiate a protective order with any such mediator, arbitrator, state or regulatory body or a court, and complies with any protective order that covers the Confidential Information.
- F. The Parties acknowledge that an individual end user may simultaneously seek to become or be a customer of both Parties. Nothing in this Agreement is intended to limit the ability of either Party to use customer specific information lawfully obtained from end users or sources other than the Disclosing Party.
- G. Each Party's obligations to safeguard Confidential Information disclosed prior to expiration or termination of this Agreement will survive such expiration or termination.
- H. Except as otherwise expressly provided elsewhere in this Agreement, no license is hereby granted under any patent, trademark, or copyright, nor is any such license implied solely by virtue of the disclosure of any Confidential Information.
- I. Each Party agrees that the Discloser may be irreparably injured by a disclosure in breach of this Agreement by the Recipient or its representatives and the Discloser will be entitled to seek equitable relief, including injunctive relief and specific performance, in the event of any breach or threatened breach of the confidentiality provisions of this Agreement. Such remedies will not be deemed to be the exclusive remedies for a breach of this Agreement, but will be in addition to all other remedies available at law or in equity.
- J. CLEC authorizes SBC-ASI to share Confidential Information held by SBC-ASI with SBC-ASI's affiliates and SBC-ASI's billing agent as is reasonably necessary to accomplish the purposes of this Agreement.
- K. CLEC agrees that it will not use SBC-ASI, its parents, affiliates, or subsidiaries' name, marks, or any language from which the connection of said names, marks therewith may be inferred or implied in any advertising, sales, sales promotion, press release, other publicity marketing or sales matters or in any other written document or oral statement relating to the Service, without SBC-ASI's express written permission. CLEC will not in any way suggest or imply that SBC-ASI



endorses or recommends the quality, reliability, or any other aspect of the Service provided by CLEC to CLEC's Customers.

8. DISPUTE RESOLUTION

A. Alternative to Litigation. The Parties desire to resolve disputes arising out of this Agreement without litigation. Accordingly, except for action seeking a temporary restraining order or an injunction related to the purposes of this Agreement, or suit to compel compliance with this dispute resolution process, the Parties agree to use the following dispute resolution procedure with respect to any controversy or claim arising out of or relating to this Agreement or its breach.

B. Billing Disputes.

- (1) The Parties agree that with respect to matters that are purely unresolved billing disputes, all bills, including bills disputed in whole or in part, are to be paid when due, that late payment charges apply to all overdue invoices as set forth in Section 2 to this Agreement. The Parties further agree that if any billing dispute is resolved in favor of the disputing Party the disputing Party will receive the disputed amount via a credit as described in Section 2 of this Agreement.
- (2) The Parties will endeavor to resolve the dispute within thirty (30) calendar days of the Payment Date on which such disputed charges are due.

C. Formal Resolution of Disputes.

- (1) Except as otherwise specifically set forth in this Agreement, for all disputes arising out of or pertaining to this Agreement, including but not limited to matters not specifically addressed elsewhere in this Agreement which require clarification, renegotiation, modifications or additions to this Agreement, either Party may invoke dispute resolution procedures available pursuant to the dispute resolution rules, as amended from time to time, of the Public Service Commission of Missouri. Also, upon mutual agreement, the Parties may seek commercial binding arbitration as specified in Section 8.D.
- (2) The Parties agree that the dispute resolution procedures set forth in this Agreement are not intended to conflict with applicable requirements of the Act or the state commission with regard to procedures for the resolution of disputes arising out of this Agreement.

D. Arbitration. When both Parties agree to binding arbitration, disputes will be submitted to a single arbitrator pursuant to the Commercial Arbitration Rules of the American Arbitration Association or pursuant to such other provider of arbitration services or rules as the Parties may agree. The place where each separate arbitration will be held will alternate between San Antonio, Texas, and St. Louis, Missouri, unless the Parties agree otherwise. The arbitration hearing will be requested to commence within sixty (60) calendar days of the demand for arbitration. The arbitrator will control the scheduling so as to process the matter expeditiously. The

Parties may submit written briefs upon a schedule determined by the arbitrator. The Parties will request that the arbitrator rule on the dispute by issuing a written opinion within thirty (30) calendar days after the close of hearings. The arbitrator has no authority to order punitive or consequential damages. The times specified in this Section may be extended or shortened upon mutual agreement of the Parties or by the arbitrator upon a showing of good cause. Each Party will bear its own costs of these procedures. The Parties will equally split the fees of the arbitration and the arbitrator. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction.

## 9. LAW ENFORCEMENT AND CIVIL PROCESS

- A. Intercept Devices. Local and federal law enforcement agencies periodically request information or assistance from telecommunications carriers. When either Party receives a request associated with a customer of the other Party, that Party will comply with any valid request, to the extent the receiving party is able to do so; if such compliance requires the assistance of the other Party such assistance will be provided.
- B. Subpoenas. If a Party receives a subpoena for information concerning an end user the Party knows to be a customer of the other Party, the receiving Party will refer the subpoena to the requesting entity with an indication that the other Party is the responsible company. Provided, however, if the subpoena requests records for a period of time during which the receiving Party was the end user's service provider, the receiving Party will respond to any valid request to the extent the receiving Party is able to do so; if response requires the assistance of the other Party such assistance will be provided.

## 10. GENERAL PROVISIONS

- A. Non-Waiver. The failure of SBC-ASI or CLEC to insist upon strict performance of any provision of this Agreement in any one (1) or more instances will not be construed as a waiver or relinquishment for the future of any such provision, but the same will be and remain in full force and effect.
- B. Headings. Section headings contained in this Agreement are for reference purposes only and will not affect the meaning or interpretation of this Agreement.
- C. Notices. All notices or other communications hereunder will be deemed to have been fully given when made by confirmed facsimile or similar confirmed communication, made in writing and delivered in person, or deposited in the United States mail, postage prepaid, and addressed as follows:

To CLEC:            Mr. Herbert Kenney  
                          General Counsel  
                          3555 Northwest 58<sup>th</sup> Street, Suite 900  
                          Oklahoma City, Oklahoma 73112  
                          Fax: 405/516-8217

To SBC-ASI: Mr. Lincoln E. Brown  
Director - Regulatory & Interconnection  
300 Convent Street, Room 1998  
San Antonio, Texas 78205  
Fax: 210/246-8152

Copy to: Legal Department  
SBC Advanced Solutions, Inc.  
300 Convent Street, 18<sup>th</sup> Floor  
San Antonio, Texas 78205  
Attention: General Counsel

Either Party may unilaterally change any of its notice information above by giving written notice to the other Party pursuant to this section. Any notice to change the notice information shall be deemed effective ten (10) calendar days following receipt by the other Party.

- D. Governing Law. This Agreement will be construed in accordance with and be governed by the domestic laws of the State of Missouri, without regard for provisions relating to conflicts of law.
- E. Releases. Neither SBC-ASI nor CLEC will require waivers or releases of any rights from representatives of the others in connection with visits to SBC-ASI's, CLEC's or CLEC's Customer's premises, and no such releases or waivers will be pleaded or otherwise asserted by SBC-ASI or CLEC in any action or proceeding.
- F. Severability. If any provision of this Agreement is determined to be invalid or unenforceable, such invalidity or unenforceability will not invalidate or render unenforceable the entire Agreement, but rather the entire Agreement will be construed as if not containing the particular invalid or unenforceable provision or provisions, and the rights and obligations of SBC-ASI and CLEC will be construed and enforced accordingly.
- G. Survival. Obligations, which by their nature would continue beyond the termination, cancellation or expiration of this Agreement, will survive termination, cancellation or expiration of this Agreement.
- H. Consent. Where consent, approval, or mutual agreement is required of a Party, it will not be unreasonably withheld.
- I. Counterparts. This Agreement may be executed in multiple counterparts, each of which will be deemed an original but all of which will together constitute but one and the same document.
- J. Relationship of Parties/Independent Contractor. Each Party is an independent contractor, and has and hereby retains the right to exercise full control of and supervision over its own performance of its obligations under this Agreement and

retains full control over the employment, direction, compensation and discharge of its employees assisting in the performance of such obligations. Each Party will be solely responsible for all matters relating to payment of such employees, including compliance with social security taxes, withholding taxes and all other regulations governing such matters. Subject to the limitations on liability and except as otherwise provided in this Agreement, each Party will be responsible for (i) its own acts and performance of all obligations imposed by applicable law in connection with its activities, legal status and property, real or personal and, (ii) the acts of its own affiliates, employees, agents and contractors during the performance of the Party's obligations hereunder.

- K. Amendments and Waivers. Except as otherwise provided in this Agreement, no amendment or waiver of any provision of this Agreement and no consent to any default under this Agreement will be effective unless the same is in writing and signed by an officer of the Party against whom such amendment, waiver or consent is claimed. In addition, no course of dealing or failure of a Party strictly to enforce any term, right or condition of this Agreement will be construed as a waiver of such term, right, or condition.
- L. Access. CLEC will assure that SBC-ASI is provided reasonable access to all CLEC or CLEC's customer premises at all reasonable hours for the purpose of installing, inspecting, testing, rearranging, maintaining, repairing or removing the Services.

#### **RESALE, ORDERING, PROVISIONING, AND MAINTENANCE**

#### **11. RESALE**

- A. At the request of CLEC, and pursuant to the requirements of the Act, the Services that SBC-ASI currently provides or hereafter provides at retail to subscribers who are not telecommunications carriers will be made available for resale to CLEC by SBC-ASI in accordance with the terms and conditions set forth in this Agreement. SBC-ASI shall make its Services available for resale to CLEC on terms and conditions that are reasonable and nondiscriminatory. SBC-ASI will not prohibit, nor impose unreasonable or discriminatory conditions or limitations on the resale of its Services.
- B. SBC-ASI is not required to make Services available for resale at wholesale rates to CLEC for its own use. Further, to the extent CLEC resells Services that require certification on the part of the CLEC's Customer, CLEC will ensure that the CLEC's Customer has received proper certification and complies with all rules and regulations as established by the Commission. CLEC represents and warrants to SBC-ASI that it is authorized to resell the Services and will obtain all regulatory and other certificates, licenses and rights-to-use authorizations needed to resell the Services and will provide this documentation to SBC-ASI before the Services are ordered by CLEC. Such Services are subject in all respects to the provisions of this Agreement, including, but not limited to, geographical limits, applicable laws, and publicity.

- C. CLEC will not use the Services covered by this Agreement to provide intrastate or interstate access services or to avoid intrastate or interstate access charges to itself, inter-exchange carriers ("IXCs"), wireless carriers, competitive access providers ("CAPs"), or other telecommunications providers. Provided however, that CLEC may permit its Customers to use resold Services to access IXCs, wireless carriers, CAPs, or other retail telecommunications providers.
- D. CLEC may at any time add or delete features to or relocate the Services where available for CLEC's Customers except for grandfathered services. CLEC may only resell grandfathered Services to customers that are eligible to receive grandfathered Services from SBC-ASI. SBC-ASI has the right to grandfather SBC-ASI's Services with ninety (90) calendar days notice to CLEC that such Services will be grandfathered.
- E. CLEC will handle all questions from CLEC's Customers relating to the Services being resold.
- F. Promotions, Pricing, Wholesale Discount
  - 1. The Services offered by SBC-ASI through promotions will be available to CLEC on terms and conditions no less favorable than those SBC-ASI makes available to its customers, provided that for promotions of ninety (90) calendar days or less, SBC-ASI will offer the services to CLEC for resale at the promotional rate without a wholesale discount. For promotions of more than ninety (90) calendar days, SBC-ASI will make the services available at the avoided cost resale discount from the promotional rate.
  - 2. Pricing for the resale of SBC-ASI's Services is set forth in Schedule A to this Agreement. Pricing in Schedule A is subject to change with thirty (30) calendar days notice to CLEC.
  - 3. Where applicable, the interim avoided cost resale discount will be 19.2%, subject to true up when the Missouri PSC adopts a permanent avoided cost discount rate applying to SBC-ASI Services. The avoided cost resale discount does not apply to the resale of xDSL or VPOP-DAS service that SBC-ASI sells to Internet Service Providers.
- G. SBC-ASI will make available to CLEC for resale at the wholesale discount rate shown herein new Customer Service Contracts ("CSC") that SBC-ASI sells to retail customers. CLEC may resell new CSCs only to customers similarly situated to SBC-ASI's retail CSC customer.
- H. Services are subject to resale under this Agreement only where such Services have been deployed by SBC-ASI and only where there is existing capacity on SBC-ASI's deployed facilities to provide the Services.

- I. SBC-ASI will recognize CLEC as the customer of record for all Services ordered by CLEC and will send all notices, invoices and pertinent information directly to CLEC.

## 12. PRE-ORDERING AND ORDERING

- A. SBC-ASI will provide non-discriminatory access to the same pre-ordering information available to SBCI-ASI.
- B. Non-DSL Service Orders. The procedures for placing an order to resell SBC-ASI's non-DSL Services are addressed in Section 20 (Ordering and Terminating Non-DSL Services).
- C. DSL Service Orders. The procedures for placing an order to resell SBC-ASI's DSL Transport Service are addressed in Section 26 (Ordering and Terminating DSL Transport Service) and Section 27 (DSL Transport Operational Support Systems).

## 13. INSTALLATION

- A. SBC-ASI will provide CLEC with an installation date for the Service. Subject to subsection C below, no deviations from the installation date shall occur without the approval of SBC-ASI. SBC-ASI will provide installation of Service to CLEC within due date intervals that are at least equal to that provided to SBC-ASI retail customers.
- B. Installation of the Service may require the installation of certain equipment and facilities on SBC-ASI's side of the demarcation. Consistent with the availability of such equipment and facilities, installation of the Services shall be established by SBC-ASI as provided in subsection A above. Installation shall be deemed to have occurred on the date when the Services are provided.
- C. If installation is delayed due to changes not initiated by SBC-ASI; for example, the acts or omissions of CLEC, CLEC's Customer or a contractor, or due to any force majeure occurrence, SBC-ASI shall have the right to extend installation for a reasonable period of time at least equal to the period of such delay. Any delays in installation must be communicated as soon as practical between the Parties.
- D. Provision of the Service is subject to the availability and operational limitations of the requisite equipment and associated facilities.
- E. If the Service requires use of Customer Equipment, such Customer Equipment must be compatible with SBC-ASI's equipment and facilities and must conform to industry standards and specifications as outlined in this Agreement.
- F. CLEC shall ensure the continuing compatibility of Customer Equipment. CLEC shall be responsible for the installation, operation and maintenance of Customer Equipment. No combination of Customer Equipment shall require change in or

alteration of the equipment or the Services; cause electrical hazards to SBC-ASI's personnel or damage to SBC-ASI's equipment; or cause degradation of the Service to persons other than the user of the subject terminal equipment or communications system. Upon notice from SBC-ASI that Customer Equipment is causing such hazard, damage, malfunction or degradation of the Service, CLEC shall promptly make such changes as shall be necessary to remove or prevent such hazard, damage, malfunction or degradation of the Service.

- G. SBC-ASI may subcontract any portion of the Services to be performed without notice to and prior approval of CLEC.
- H. The Services shall not be used for an unlawful purpose or used in an abusive manner. Abusive use includes:
  - 1. The use of the Service, anonymously or otherwise, in a manner reasonably expected to frighten, abuse, torment or harass another; or
  - 2. The use of the Service in such a manner as to interfere unreasonably with the use of the Service by one (1) or more other SBC-ASI customers. When such use occurs, SBC-ASI may terminate the Services with no liability, and CLEC shall indemnify, defend and hold harmless the SBC-ASI Entities from and against any claim, loss or damage arising out of such use.
- I. SBC-ASI may make changes in its services, equipment, operations or procedures, including those related to the Service, where such action is not inconsistent with the proper operation of the Service. If any such change can be reasonably expected to render any of the CLEC equipment incompatible or otherwise materially affect its use or performance, CLEC will be provided written notice in advance of the change.
- J. CLEC shall reimburse SBC-ASI for damages to SBC-ASI facilities used to provide the Services caused by the negligence or willful act of CLEC or CLEC's Customer or resulting from CLEC's or CLEC's Customer's improper use of SBC-ASI facilities, or due to the malfunction of any facilities or equipment provided by someone other than SBC-ASI. Upon agreement for reimbursement of damages, SBC-ASI will cooperate with CLEC in prosecuting a claim against the person causing such damage. CLEC shall be subrogated to the right of recovery by SBC-ASI for damages to the extent of such payment.
- K. SBC-ASI will provide notice to CLEC of order completion within intervals that are at least equal to those provided for SBC-ASI retail customers.

#### 14. MAINTENANCE

A. SBC-ASI will provide repair, maintenance, testing, and surveillance for all Services in accordance with the terms and conditions of this Agreement. SBC-ASI will provide maintenance for all Services resold by CLEC under this Agreement at levels equal to the maintenance provided by SBC-ASI in serving its customers, and will meet the requirements set forth in this Agreement. Such maintenance requirements will include, but not limited to, those applicable to testing and network management.

#### B. Tool Bar Maintenance Applications

(1) CLEC and SBC-ASI agree to work together to implement the following functions through ASI Tool Bar Trouble Administration ("Tool Bar") or other applicable SBC-ASI interface:

- (A) the ability to enter a new trouble ticket electronically;
- (B) the ability to receive the Estimated Time To Repair ("ETTR") electronically with the successful creation of the trouble ticket;
- (C) the ability to retrieve and track the current status trouble ticket;

(2) SBC-ASI agrees to notify CLEC of upgrades to existing test systems and the deployment of new test systems within SBC-ASI and to negotiate with CLEC to allow CLEC to use such systems through a controlled interface.

#### C. Repair Service Response

SBC-ASI will provide repair service that is at least equal in quality to that provided to SBC-ASI customers. Trouble calls from CLEC will receive response time and priorities that are at least equal to that of SBC-ASI customers.

#### D. Intercompany Communications

The SBC-ASI Data Operations Center ("DOC") will notify CLEC of the existence, location, and source of all emergency network outages affecting a CLEC Customer.

#### E. Misdirected Repair Calls

All misdirected repair calls to SBC-ASI from CLEC customers will be given a recording (or live statement) directing them to call the number designated by CLEC.



#### F. Repair Procedures

- (1) CLEC will refer repair calls to the SBC-ASI Data Service Center ("DSC") by telephone or via the Toolbar interface, or other applicable SBC-ASI interface. The SBC-ASI DSC will answer its telephone and begin taking information from CLEC at the same level of service as provided to SBC-ASI's customers when calling the DSC.
- (2) The SBC-ASI DSC will notify the CLEC of each missed repair commitment through a status call.
- (3) For purposes of this section, a Service is considered restored or a trouble resolved when the quality of a Resale service is equal to that provided before the outage or the trouble occurred.

#### G. Escalation Procedures

SBC-ASI will provide CLEC with written escalation procedures for maintenance resolution to be followed if, in CLEC's judgment, any individual trouble ticket or tickets are not resolved in a timely manner.

#### H. Premises Visit Procedures

- (1) SBC-ASI Maintenance of Service Charges, when applicable, will be billed by SBC-ASI to CLEC, and not to CLEC's customers.
- (2) Dispatching of SBC-ASI technicians to CLEC customer premises shall be accomplished by SBC-ASI pursuant to a request received from CLEC and CLEC shall pay for such dispatch.
- (3) If a trouble cannot be cleared without access to CLEC's Customer's premises and the Customer is not at home, the SBC-ASI technician will leave at the Customer's premises a non-branded "no access" card requesting the Customer to call CLEC for rescheduling of repair, and CLEC shall pay for such dispatch.

### **INTERCONNECTION**

#### 15. **GENERAL PROVISIONS**

- A. CLEC may interconnect its network to SBC-ASI's network for the purpose of exchanging traffic between the Parties' networks at any technically feasible point in SBC-ASI's network to the extent required by the ASCENT Decision. In such cases, SBC-ASI will provide interconnection to CLEC that is at least equal in quality to that provided by SBC-ASI to itself or to any subsidiary, affiliate, or any other party to which SBC-ASI provides interconnection.

- B. Notice of Network Changes. SBC-ASI agrees to provide reasonable notice consistent with applicable FCC rules of changes in the information necessary for the transmission and routing of services using SBC-ASI's network, as well as of any other changes that would affect the interoperability of SBC-ASI's network. This Agreement is not intended to limit SBC-ASI's ability to upgrade its network through the incorporation of new equipment, new software or otherwise so long as such upgrades are consistent with SBC-ASI's obligations to CLEC under the terms of this Agreement.
- C. If either Party changes the methods by which it routes traffic within its network, it will afford the other Party the opportunity to route its traffic in the same manner for purposes of interconnection.
- D. The CLEC will be responsible for forecasting all interconnections between the two (2) networks. SBC-ASI will be responsible for servicing the interconnection port on the ATM switch. If CLEC purchases the facilities from SBC-ASI, SBC-ASI will also be responsible for servicing the facilities connecting the two (2) switches.
- E. SBC-ASI supports the industry standards for interconnection. Interconnection between CLEC and SBC-ASI will be completed through the generic terms of a Port connection. For ATM Service, the Port Connection will be done as a Broadband - ISDN Inter Carrier Interface (B-ICI) Protocol. For Frame Relay, the Port Connection will be done as a Network-to-Network (NNI) protocol. The facilities to connect the Port between the CLEC and SBC-ASI must be the same speed as the port. SBC-ASI uses multiple vendors for its ATM/Frame Relay switches that comply with industry standards for interconnection.

## 16. INTERCONNECTION CONFIGURATIONS

### A. ATM Logical Provisioning over the Interconnection

ATM uses logical connections or software-defined connections between end points in the network. These Permanent Virtual Connections ("PVCs") can either be Virtual Channel Connections ("VCC") or Virtual Path Connections ("VPC") in the ATM Cell Relay Service network. A VCC is simply an individual point-to-point virtual connection carrying one (1) application, whereas a VPC is a collection of VCCs that are routed together as one (1) unit end-to-end through the network. ATM has three (3) class of services associated with the PVCs:

- (1) Unspecified Bit Rate ("UBR"). UBR is a "best effort" class of service for critical, delay-tolerant applications. SBC-ASI allows for over-subscription rate of the logical connections up to 200% of the port bandwidth.

- (2) Variable Bit Rate-Non Real Time ("VBR-NRT"). VBR-NRT is used for designed or bursty data traffic (like email, file transfer, local area network [LAN] to local area network interconnection). SBC-ASI allows for subscription rate of the logical connections up to 100% of the port bandwidth.
- (3) Constant Bit Rate ("CBR"). CBR carries the highest rating for applications that are real-time and delay-sensitive, like voice and video. SBC-ASI allows for subscription rate of the logical connections up to 100% of the port bandwidth.

**B. Physical Interconnection with CLEC's Facilities.**

SBC-ASI will interconnect with CLEC's facilities as follows: In each SBC-ASI LATA in which CLEC offers local exchange service, the Parties will interconnect their network facilities at a minimum of one (1) mutually agreeable Point of Interconnection ("POI"). The POI will be established as the connection point into the SBC-ASI network. Each Party will be responsible for providing necessary equipment and facilities on their side of the POI. SBC-ASI will provision Services to the CLEC POI.

**C. ATM B-ICI**

- (1) SBC-ASI's ATM Service adheres to the industry standards. Bi-directional communication is provided between SBC-ASI and CLEC. The B-ICI provides a set of specifications to allow the interconnection of ATM based public networks belonging to different carriers. The B-ICI is an interface between two (2) different public network providers or carriers. The physical layer of the interface between the two (2) carriers based on the CCITT defined Network Node Interface.
- (2) The bandwidth of the port will be either: DS1, DS3, or OC3 .
- (3) The interconnection between SBC-ASI and the CLEC can occur two (2) ways. If the CLEC provides its own transport, the connection into the physical switch is the meet point. If SBC-ASI provides the transport, the interconnection can occur at any mutually agreeable, economically and technically feasible point. This interconnection will be either on DS1, DS3, or OC3 facility depending on the technology being utilized. There are two (2) basic interconnection designs:
  - (A) Design One: B-ICI Connection. CLEC purchases transport and interconnection from SBC-ASI. SBC-ASI will terminate the interconnection to the CLEC's termination point. The network interconnection point ("NIP") shall be designated as the Circuit Facility Assignment ("CFA") point. The CLEC must have some point of interconnection available for SBC-ASI to connect into. SBC-ASI will not be responsible for building out facilities or extra charges associated

with interconnection for the CLEC. Each Party is responsible for designing, provisioning, ownership and maintenance of all equipment and facilities on its side of the NIP.

- (B) Design Two: Network Gateway Interface ("NGI") Connection. CLEC will provide transport into SBC-ASI facility. CLEC will either purchase/lease access or use its own access to interconnect with SBC-ASI. The CLEC will be responsible for any cost associated with delivering the access facility to SBC-ASI's demarcation point. The NIP shall be designated as the Demarcation Point. SBC-ASI will have a specified location for entry. The appropriate CFA information will be provided to the CLEC. Each Party is responsible for designing, provisioning, ownership and maintenance of all equipment and facilities on its side of the NIP.

#### D. FRAME RELAY-NNI

- (1) SBC-ASI's Frame Relay Service ("FRS") adheres to industry standards. The NNI protocol is used to propagate status information between the network switching elements. It is also used to detect link and device failures.
- (2) The available bandwidth of the NNI port will be either DS1 or DS3.
- (3) SBC-ASI will allow the CLEC to subscribe the port to 200% over-subscription as it pertains to the amount of traffic being forced over the network. All PVC traffic for Frame Relay is given the service category of UBR. There is also a physical limit, depending on switch type, on the amount of PVCs that can be subscribed per port.
- (4) SBC-ASI has the capability of Frame Relay to ATM Interworking. Depending on the traffic type, the CLEC may decide to buy ATM connections from SBC-ASI. The CLEC can still put Frame Relay traffic over the interconnection as long as the CLEC subscribes to Frame Relay to ATM Interworking on the CLEC switch.

#### E. INTERCONNECTION PLANNING

The Parties will mutually agree upon the precise terms of each interconnection facility. These terms will cover the technical details of the interconnection as well as other network interconnection, provisioning and maintenance issues.

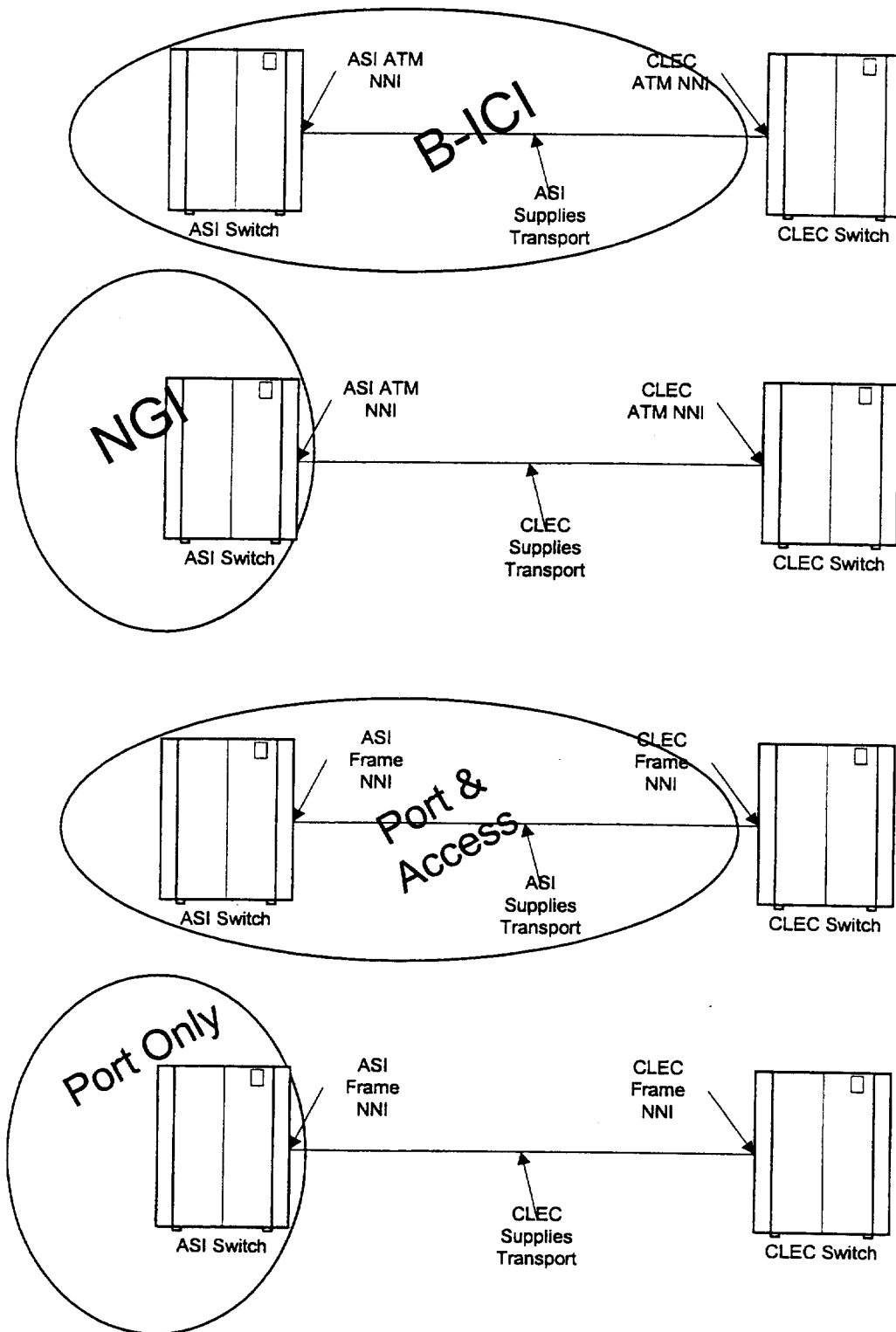
- (1) The CLEC location may include multiplexing and facilities required to take the handoff from SBC-ASI for interconnection facilities as outlined in this Agreement.

- (2) In both designs, CLEC and SBCI-ASI will mutually agree on the capacity of the termination to be utilized. The capacity will be based on the request from the CLEC.
- (3) If CLEC seeks to interconnect with SBC-ASI's network for the purpose of exchanging local traffic between the Parties' networks, using any other configuration or at any other technically feasible point in SBC-ASI's network, the Parties shall negotiate the terms and conditions for such interconnection.

## 17. INTERCONNECTION DIAGRAMS

This section provides diagrams of the general connection requirements for CLEC to interconnect any CLEC-provided facility with SBC-ASI facilities. The diagrams in this Section, which are not necessarily all inclusive, depict different interconnection scenarios. Any figures or schematics are for convenience of reference only and in no way modify the terms and conditions of this Agreement or commit SBC-ASI to interconnect in a specific way.

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## **TERMS APPLYING TO ALL NON-DSL ADVANCED SERVICES**

### **18. DESCRIPTION OF NON-DSL SERVICES**

As indicated herein, SBC-ASI will make the following Non-DSL Services available for resale within its affiliated ILEC's service territory in the state of Missouri.

- A. **Asynchronous Transfer Mode Cell Relay Service ("ATM CRS")** is a cell-based, broadband communication technology using 53-byte cells to transport data, video traffic and, when available, voice. ATM CRS switching provides a flexible way to handle bursty traffic, combining the statistical efficiencies of packet switching with the low delays of circuit switching. ATM CRS offers low latency, high throughput and flexible bandwidth interconnections capable of carrying a wide range of services.
- B. **Frame Relay Service ("FRS")** is a transport service that facilitates the exchange of customer data in variable length information units, frames or packets between end user connections by way of assigned virtual connections. Based on American National Standards Institute ("ANSI") and Consultative Committee for International Telephony and Telegraph ("CCITT") standards for FRS, each frame is passed to the FRS network with an address that specifies the virtual connections. FRS is capable of handling the requirements of bursty data sources because of the ability of the service to allocate additional bandwidth when not in use by other services. FRS allows end users to share network resources.
- C. **Native LAN Plus** is a fiber-based service transported over ATM CRS. Native LAN Plus supports both point-to-point and multipoint configurations for Ethernet-to-Ethernet LAN connections at 100 MBPS (IEEE 802.3u).
- D. **Virtual Point of Presence - - Dial Access Service (VPOP-DAS)** is a modem-based transport service that provides a medium to high-speed data connection for delivery of data to an Internet Service Providers ("ISPs") and large business customers with a need to provide dial access and modem pooling to their local area network ("LAN") and the Internet for their Customers. This is accomplished by extending the LAN via the virtual private networking capabilities of a network access server ("NAS") which is deployed in the SBC ILEC end office. The NAS provides the modem pooling functionality. The virtual network is extended from the NAS to the CLEC's Customer's LAN via the FRS or ATM CRS networks.

CLEC acknowledges that CLEC must also purchase a terminating SBC-ASI transport service, such as FRS or ATM to provide for delivery of dial-up traffic. PVCs, used to provide a logical connection to an end user, are established through the standard service order provisioning process when VPOP-DAS and FRS or ATM CRS are ordered.

## 19. PRICES, MOVES, ADDS AND CHANGES RELATING TO NON-DSL SERVICES

### A. Prices

- (1) Retail prices for Non-DSL Services are listed in Schedule A attached to this Agreement. Nonrecurring charges will apply as set forth in Schedule A. The prices do not include any independent company or inter-exchange carrier charges, intrabuilding network cable, simple inside wire, repair services for such cable and wire or wiring associated with Customer Equipment. The prices also do not include FCC or other mandated surcharges which will be billed on a monthly basis.
- (2) Schedule A is subject to change with thirty (30) calendar days notice to CLEC. In addition, the prices are subject to change based on any legislative, regulatory or judicial determination as set forth in the Intervening Law provision of this Agreement. Should prices increase due to any specific applicable order of the FCC or any specific applicable governmental regulatory authority, CLEC may continue Service at the new mandated prices, or terminate this Agreement without any termination charges under the terms set forth in the termination clause of this Agreement or further obligation to SBC-ASI beyond paying for Service rendered up to and including the effective date of termination.
- (3) CLEC may request that month-to-month Service be converted to a Term Pricing Plan ("TPP"). If CLEC requests that Service provided under a TPP be converted to month-to-month, the request will be treated as a termination of Service and termination charges will apply.

### B. Moves

- (1) A move involves a change in the physical location of (1) the point of termination at the CLEC's Customer's premises or (2) the CLEC's Customer's premises. The charges for the move depend on whether the move is to a new location within the same building or to a different building.
  - (A) Moves within the same building - The charge will be an amount equal to one half of the nonrecurring charges, i.e., installation charge, and all associated special construction and material charges for Service. There will be no change in TPP term requirements.
  - (B) Moves to a different building - Moves to a different building will incur all associated nonrecurring and special construction and material charges. There will be no change in TPP term requirements.
- (2) If an order to move Service provided under a TPP to a particular customer does not meet one (1) or more of the conditions described below, it will be treated as a discontinuance of Service and the establishment of new Service and termination charges will apply. Except as noted, the monthly prices for the new



Service will be those in effect at the time Service is moved. All nonrecurring charges associated with the establishment of the new service will apply.

(A) For moves or changes at the same transmission speed, CLEC may move Service for a particular customer to a new location for that customer, or move and change Service for that customer to another SBC-ASI Service without incurring termination charges provided all of the following conditions are met:

- (1) The new Service is provided solely by SBC-ASI on a resold basis to CLEC.
- (2) CLEC's request to disconnect Service and request for new Service are received at the same time.
- (3) The due date of the new connect order must be within one hundred twenty (120) calendar days after the due date of the disconnect order.
- (4) The new Service has a transmission speed equal to or greater than the transmission speed of Service.
- (5) For permanent virtual circuits ("PVCs") (or Logical Links for FRS), the move must be associated with the move of one (1) or more associated interfaces.
- (6) For ATM CRS, the new Service establishes a new TPP equal to or greater than the original TPP at the former location.
- (7) For other SBC-ASI services, the total monthly price of the new Service is equal to or greater than the total monthly price of Service.

(B) For moves involving upgrades in transmission speed, CLEC may move Service provided for a particular customer to a new location for that customer and upgrade to a higher transmission speed, or move and upgrade to another higher speed SBC-ASI Service for that customer without incurring termination charges provided all of the following conditions are met:

- (1) The new Service is provided solely by SBC-ASI on a resold basis to CLEC.
- (2) CLEC's requests to disconnect Service and request for new service are received at the same time.
- (3) The due date of the new connect order must be within one hundred twenty (120) calendar days of the due date of the disconnect order.
- (4) The new Service has a transmission speed greater than the transmission speed of Service.
- (5) For PVCs (or Logical Links for FRS), the move must be associated with the move of one (1) or more associated ports.
- (6) For ATM CRS at a higher transmission speed, the new Service establishes a new ATM CRS TPP effective on the Service date.
- (7) For other SBC-ASI services, the total monthly price of the new Service is equal to or greater than the total monthly price of the existing Service being discontinued.

### C. Adds and Changes

- (1) CLEC may upgrade Service provided for a particular CLEC Customer location to a higher transmission speed or to another SBC-ASI service of equal or greater transmission speed without incurring termination charges if all of the following conditions are met:
  - (A) The new Service is provided solely by SBC-ASI on a resold basis to CLEC.
  - (B) The new Service is provided to the same CLEC Customer location.
  - (C) For PVCs (or Logical Links for FRS), the new Service must be provided between the same two (2) locations.
  - (D) The CLEC's request to disconnect Service and request for new Service are received at the same time.
  - (E) The CLEC's disconnect order references the connect order for the new Service.
  - (F) For ATM CRS at a higher transmission speed, the new Service must establish a new ATM CRS TPP effective on the Service date.
  - (G) For other SBC-ASI Services at equal or greater transmission speed, the total monthly price of the new Service is equal to or greater than the total monthly price of Service.
- (2) If (1) SBC-ASI determines that additional equipment and facilities (such as outside plant, cable, capacity or memory) are required; or (2) CLEC requests additional service or features which are not included in this Agreement; or (3) CLEC requests a transition of Service to new or alternate technologies offered by SBC-ASI, or (4) substantial change in regulatory policy occurs causing a reduction in Service and such reduction of Service is not caused, in whole or in part, by CLEC's acquisition of equivalent services from other telecommunications service providers, or (5) due to the changing telecommunications market, regulatory changes occur which have a material effect on Service, SBC-ASI may perform a financial study to determine the price(s) for the requested service and, if appropriate, the Parties shall execute an amendment to this Agreement reflecting the additional or changed service and the agreed upon price(s).

## 20. ORDERING AND TERMINATING NON-DSL SERVICES

### A. Ordering Non-DSL Services

- (1) VPOP-DAS Orders: CLEC must contact their SBC Account Team and follow the Inquiry Process, specifying the number of ports required by Wire Center. The SBC Account Team will then process the request for CLEC.
- (2) Other Non-DSL Service Orders: CLEC must submit an Access Service Request ("ASR") to the SBC Access Service Center ("ASC"). The ASC will then coordinate the ordering process with SBC-ASI.

**B. Terminating Non-DSL Services**

Subject to the provisions in Section 1B of this Agreement, CLEC may terminate a TPP or disconnect, in whole or in part, Service without cause. If this occurs during the initial term of the TPP, SBC-ASI will compute the termination charges and render a bill to CLEC, which CLEC agrees to pay within thirty (30) calendar days according to the following:

50% of the monthly price for each Service disconnected	X	the number of months remaining in the term of the applicable TPP.
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The termination charge applies to each Service disconnected or, in the case of cancellation of the TPP, to each Service included in the canceled TPP.

It is CLEC's responsibility to give SBC-ASI notice of the intent to terminate a TPP. Month-to-month prices will apply for a period of one (1) month from the date SBC-ASI receives the termination notice or until the requested termination date, whichever period is longer. These charges will apply during this period whether or not CLEC continues to use Service.

**21. TERMS APPLYING TO VPOP-DAS EXCLUSIVELY**

- A. Minimum Port Groups: CLEC must subscribe to the following minimum quantities throughout the term hereof:

The initial minimum quantity of VPOP-DAS that can be ordered is two (2) port groups in each LATA in which CLEC orders VPOP-DAS, where a port group is comprised of twenty-four (24) ports. These initial two (2) port groups may be any combination of metro and/or LATA-wide port groups. After the initial quantity, VPOP-DAS may be ordered in increments of one (1) or more port groups at a time at a NAS site where CLEC has established VPOP-DAS.

- B. Additional Port Groups. Ports must be added in groups of twenty-four (24) ports and are coterminous with associated ports. If CLEC requests service for less than three (3) years, a non-recurring charge of \$1,000 for each additional port group will apply.

- C. Port Reduction.

- (1) If CLEC needs to decrease ports within a quantity range (i.e. 2-5, 6-17, 18-53, etc.), this can be done once without termination charges applying.

Example: If CLEC reduces from five (5) Metro port groups to four (4) Metro port groups the CLEC is not penalized the first time nor is the CLEC penalized for a reduction from fifty-three (53) Metro port groups to

forty-eight (48) Metro port groups (10% reduction). The CLEC must maintain the minimum two (2) port groups per LATA.

- (2) If Customer reduces port groups by more than the described quantities, Customer will be responsible for paying the difference between the port rate Customer previously paid and the port rate the Customer moves to. This will be retroactive from the implementation date until the date the port reduction was taken. Customer will continue to pay based on the new rate for a lower port group quantity.

Example: A CLEC on a five (5) year service term with six (6) Metro port groups wants to decrease to five (5) Metro port groups thirty-six (36) months after the implementation date. The CLEC would be responsible for the difference in port group rates from the implementation date to present. The CLEC would be charged  $\$24.00 \times 36$  (number of months) = \$864.00. In addition, the CLEC would be responsible for the \$696.00 per port group charge for the remaining twenty-four (24) months.

- D. Telephone Numbers. Five (5) telephone numbers ("TNs") or one (1) TN per port group, whichever is greater, are included at no charge to CLEC. Such TNs are used to identify calls to CLEC or CLEC's Customer and to route such calls. Additional TNs are available at a monthly charge of \$3.00 each per LATA.
- E. Forecasts-Orders-Confirmations. CLEC shall submit to SBC-ASI a twelve (12) month forecast for Dial Access Ports, no later than June 1 and December 1 of each year. Information to be provided in these forecasts will include number of ports required by month and Wire Center. CLEC is not obligated to place firm orders on forecasted quantities. The forecast will be used by SBC-ASI to anticipate CLEC's future VPOP-DAS demand; however, such forecasting will not guarantee the availability of equipment and facilities.
- F. Service Level Commitments
  1. Platform Upgrades: SBC-ASI will work with its vendor to ensure that most current hardware and software upgrades, approved for use in the SBC-ASI network, are installed on its platform in a timely and expeditious manner. CLEC's Account Team will review technical features and functionality of hardware and software upgrades with CLEC prior to installation.
  2. Help Desk: Dial Access Service includes access to 24 x 7 Customer Contact Center(s). Access to the Help Desk will be reached through a toll-free phone number. Help Desk assistance will only be provided to CLEC, and not to any CLEC Customers. The Help Desk will provide trouble ticket reporting and resolution as well as technical assistance when attempting to add, delete, or modify ports, circuits, or features of

the Dial Access service. CLEC must initiate all network changes through a Service Order, prepared by CLEC's Account Team.

### **TERMS APPLYING TO DSL TRANSPORT SERVICES**

#### **22. GENERAL PROVISIONS APPLYING TO DSL TRANSPORT SERVICES**

Subject to the provisions in Section 11 and Schedule A of this Agreement:

- A. As indicated herein, SBC-ASI will make its DSL Transport Services available for resale to CLEC within its affiliated ILEC's service territory in the state of Missouri.
- B. SBC-ASI currently only offers DSL Transport Service, as defined in Section 23A, via a line sharing arrangement (High Frequency Portion of the Line - HFPL) over a SBC ILEC-provided (non-resold, non-UNE-P) retail POTS line.
- C. SBC-ASI will offer DSL Transport Service in the green zone (0-12,000 ft). SBC-ASI will negotiate on an Individual Case Basis ("ICB") its service offering greater than 12,000 ft. based on information available from SBC-ASI's electronic ordering qualification system. SBC-ASI is not required to offer service beyond the green zone, except when CLEC resells the same Service to an existing SBC-ASI DSL Transport Customer.
- D. CLEC is required to have connectivity to SBC-ASI's ATM network (either through CLEC's own NNI network or via resale of SBC-ASI's ATM service) in each LATA CLEC chooses to provide DSL Transport Service. CLEC must have the logical ATM inventory loaded in SBC-ASI's database.

#### **23. DESCRIPTION OF DSL TRANSPORT SERVICE**

- A. For the purposes of this Agreement, DSL Transport Service is defined as an asymmetrical DSL connection, with speeds ranging from 384 Kbps to 6.0 Mbps downstream (Customer's modem must synchronize at 384 Kbps Downstream to attain the minimum speed of 384 Kbps) and Upstream speeds ranging from 128 Kbps to 384 Kbps. The "Upstream" speeds represent connection speeds in kilobits per second ("Kbps") from the network interface device ("NID") at the CLEC Customer's premises to the DSLAM (or to the remote terminal where a remote terminal has been installed) of SBC-ASI, its vendors or its affiliates; while the "Downstream" speeds represent connection speeds in Kbps or megabits per second ("Mbps"), from the DSLAM (or from the remote terminal where a remote terminal has been installed) of SBC-ASI, its vendors or its affiliates to the NID at the end user's premises.
- B. SBC-ASI offers or will offer five different packages of DSL Transport Service, each with different connection speeds as outlined in the table below:

NOTE: As of July 2000, SBC-ASI has communicated the speed offerings described below which are in process of being implemented. Actual implementation by SBC-ASI may not yet be complete, in which case all the speed offerings shown below may not be available in all areas of SBC-ASI Territory. SBC-ASI will specify any such discrepancies to CLEC in writing upon request. At the time the speed offerings described below are implemented in an area, CLEC's existing DSL Transport Service will be automatically converted to the speed offering described below which most closely corresponds to its existing service.

	<u>Downstream Speed (*)</u>	<u>Upstream Speed (*)</u>
Basic	384kbps up to 768kbps	128kbps
Basic +	768 kbps up to 1.5Mbps	128kbps
Premium	1.5Mbps up to 4.0Mbps	384kbps
Premium +	4.0Mbps up to 6.0 Mbps	384kbps
Symmetric	384 kbps	384kbps

(\*) Minimum connection speed or "sync-rate" is guaranteed between the NID at the End User's premises and the DSLAM (or the remote terminal where a remote terminal has been installed). Connection speeds may be higher under optimal conditions. Actual data transfer or throughput may be lower than sync-rate due to Internet congestion, server or router speeds, protocol overheads, and other factors that cannot be controlled by SBC-ASI.

- C. SBC-ASI provides only UBR service. Traffic Discard Priority does not apply.
- D. At this time, SBC-ASI does not support multiple PVC's over a single loop.

#### 24. CLEC-PROVIDED CPE

SBC-ASI shall deploy DSLAMs which are compatible with industry standards and shall provide CLEC with technical data, specifications and other information sufficient to allow CLEC to meet its obligation to select DSL modems, Network Interface Cards, splitters or other CPE compatible with industry standards which is necessary for CLEC's Customers to use DSL Transport Services purchased from SBC-ASI.

## 25. CLEC RESPONSIBILITIES

- A. CLEC Support. CLEC will be responsible for providing "Tier 1" technical support to its Customers in connection with any DSL Transport Services it purchases from SBC-ASI hereunder. Tier 1 technical support includes activities such as Customer contact, installation support and trouble ticketing. SBC-ASI will provide "Tier 2" technical support directly to CLEC, which CLEC may utilize to obtain information with which to provide support for its Customers. In connection with the provision of such Tier 2 support, SBC-ASI shall also provide CLEC with access to any additional technical cooperation services that SBC-ASI may establish or provide to other CLECs to enhance the deployment of DSL Transport Services (e.g., help-desk coordination, or access to new technologies that will help accelerate the deployment of DSL Transport Service).
- B. Backhaul Transport. CLEC acknowledges that it is responsible for obtaining the facilities or services for the backhaul of data to CLEC's operational data centers.

## 26. ORDERING AND TERMINATING DSL TRANSPORT SERVICE

### A. Ordering DSL Transport Service.

- (1) CLEC may issue an order to resell SBC-ASI's DSL Transport Service through the mechanized process described in Section 27 (DSL Operational Support Systems).
- (2) CLEC will determine whether its Customer's Loop is "Loop Qualified" (i.e., whether the CLEC's Customer's telephone line is able to support DSL Transport Service), and if so, place an order for DSL Transport Service with SBC-ASI. SBC-ASI will provide a mechanized process for receiving orders. CLEC shall be responsible for ensuring the accurate transmittal of (1) information regarding CLEC's Customers to SBC-ASI (except for such CLEC Customer's Loop Qualified status), and (2) the CLEC internet connectivity address information required to direct the DSL Transport Service to CLEC's internet connection.
- (3) Once SBC-ASI receives an order from CLEC in accordance with the above provisions, SBC-ASI shall then be responsible for taking all of the necessary steps to provide such CLEC Customer with the DSL Transport Service ordered by CLEC. In the event the DSL Transport Service cannot be made to function, the CLEC will be notified and the order will be cancelled, with no liability to SBC-ASI.
- (4) When CLEC places an order, SBC-ASI will specify a Due Date ("DD") based on force availability. In the event a DD other than that specified is requested by the CLEC customer, CLEC will contact SBC-ASI and the Parties will negotiate a DD based on that request. SBC-ASI will not complete the order prior to the DD or later than the DD without notification to the CLEC.
- (5) CLEC and SBC-ASI will agree to escalation procedures and contacts for resolving questions and disputes related to ordering and provisioning procedures

or to the processing of individual orders, subject ultimately to the dispute resolution provisions of this Agreement. SBC-ASI will notify CLEC of any modifications to these contacts within one (1) week of such modifications.

- (6) SBC-ASI will direct CLEC customers to contact CLEC if CLEC's Customer requests a change in service at the time of installation.
- (7) SBC-ASI will provide CLEC with the same provisioning intervals and procedures for design and complex services that it provides to SBC-ASI customers.

B. Terminating DSL Transport Service.

- (1) SBC-ASI will not initiate any CLEC Customer-requested disconnection or rearrangement of Services unless directed by CLEC. CLEC will be responsible for sending the appropriate disconnect order to SBC-ASI for any DSL Transport Service that it wishes to cancel.
- (2) Upon receipt of a disconnect order issued by CLEC, SBC-ASI will discontinue the provision of the DSL Transport Services to the CLEC's Customer pursuant to the instructions in the disconnect order. SBC-ASI will cease to charge CLEC for the provision of the particular DSL Transport Service upon the receipt of such disconnect order.
- (3) In the event that a CLEC's Customer instructs SBC-ASI not to complete an installation of DSL Transport Service at the CLEC's Customer location and SBC-ASI is thereby prevented from installing DSL Transport Service, SBC-ASI will provide notice to CLEC. CLEC will have ten (10) business days from the date of the notice to secure CLEC's Customer's permission for SBC-ASI to perform work at that location and to notify SBC-ASI in writing that it has obtained the necessary permission from CLEC's Customer. If CLEC does not notify SBC-ASI of such permission within that ten (10) business day period, SBC-ASI will cancel the order with no liability to SBC-ASI. After cancellation, any order for DSL Transport Service for the same CLEC Customer location will be treated as a new order.
- (4) After DSL Transport Service has been installed, if, for reasons beyond the control of SBC-ASI, conditions in the ILEC loop facilities change causing the DSL Transport Service to become inoperable, SBC-ASI will disconnect the inoperable Service with no liability to SBC-ASI.

C. Misdirected Calls.

SBC-ASI and CLEC will establish mutually acceptable methods and procedures for handling all misdirected calls from CLEC Customers requesting ordering or provisioning services. All misdirected calls to SBC-ASI from CLEC Customers will be given a recording (or a live statement) directing them to call their DSL provider. To the extent SBC-ASI procedures change such that CLEC Customers become



identifiable, such CLEC Customers will be directed to call CLEC at a designated 800 number. CLEC on a reciprocal basis will refer to a SBC-ASI designated number all misdirected calls that CLEC receives from SBC-ASI customers. CLEC and SBC-ASI will agree on the scripts to be used for this purpose.

27. DSL TRANSPORT OPERATIONAL SUPPORT SYSTEMS ("OSS")

- A. On or before the Effective Date of the Agreement, SBC-ASI will provide ordering specifications for DSL Transport Service and all Customer data required by SBC-ASI from CLEC to provision these services. SBC-ASI ordering and provisioning systems require the CLEC to order DSL Transport Service and provide internet service details at the same time.
- B. SBC-ASI will provide a Single Point of Contact ("SPOC") for all of CLEC's ordering and provisioning contacts and order flow involved in the ordering and provisioning of the Services provided by SBC-ASI to CLEC. SBC-ASI will provide ordering and provisioning services to CLEC for Service orders Monday through Friday from 8 a.m. to 5:30 p.m. SBC-ASI will provide the same hours of provisioning coverage for CLEC Customers as SBC-ASI provides to its customers.
- C. SBC-ASI will endeavor to provide electronic systems Monday through Saturday from 7 a.m. to 11 p.m.; and, Sunday from 10:00 a.m. to 8:00 p.m. for all ordering and provisioning order flows. Notwithstanding the foregoing, the Parties recognize that there may be periods when systems are down due to unforeseen difficulties.
- D. SBC-ASI and CLEC will jointly establish interface contingency and disaster recovery plans for the ordering and provisioning of the Services.
- E. SBC-ASI Electronic Ordering Systems
  - (1) Complex Product Service Order System ("CPSOS"). CPSOS provides CLEC wishing to resell SBC-ASI DSL Transport Services with real-time loop qualification capability. Once a loop is qualified, CLEC may enter a request for SBC-ASI DSL Transport Service through CPSOS. CPSOS also provides CLEC with the capability to manage its outstanding orders and their rudimentary status.
  - (2) Batch Qualification and Batch Ordering. Batch Qualification provides CLEC the ability to qualify bulk quantities of CLEC's Customers' TNs. CLEC must compile and transmit to a designated FTP site a list of Customer TNs. Batch Qualification will then process the list and ascertain whether the TNs qualify for SBC-ASI DSL Transport Service. Batch Ordering likewise processes a list of TNs and their corresponding service request parameters through SBC-ASI systems.

## 28. FORECASTING

If CLEC desires to stimulate sales of DSL Transport Service in a particular area through special promotions or otherwise, CLEC shall provide SBC-ASI with at least sixty (60) calendar days prior written notice of this event and shall specify the forecasted volumes by central office. SBC-ASI will work with CLEC and use reasonable efforts to accommodate any such increase in anticipated demand, but CLEC recognizes that DSL Transport Service is dependent on availability of facilities and other regulatory, business and operating constraints. In the event such activities exhaust existing DSL equipment, SBC-ASI is not obligated to add additional equipment.

## ANCILLARY FUNCTIONS

### 29. UNBUNDLED PACKET SWITCHING

A. SBC-ASI will provide CLEC unbundled packet switching to the extent required by the ASCENT Decision at a particular location if all of the following conditions are satisfied with respect to that location:

- (1) SBC-ASI's affiliated ILEC has deployed digital loop carrier systems, including but not limited to, integrated digital loop carrier or universal digital loop carrier systems; or has deployed any other system in which fiber optic facilities replace copper facilities in the distribution section (e.g., end office to remote terminal, pedestal or environmentally controlled vault);
- (2) There are no spare copper loops capable of supporting the xDSL services CLEC seeks to offer;
- (3) SBC-ASI's affiliated ILEC has not permitted CLEC to deploy a Digital Subscriber Line Access Multiplexer ("DSLAM") at the remote terminal, pedestal or environmentally controlled vault or other interconnection point, nor has the requesting carrier obtained a virtual collocation arrangement at these sub-loop interconnection points as defined by 47 CFR §51.319(b); and
- (4) SBC-ASI has deployed packet switching capability for its own use.

### 30. COLLOCATION

To the extent required by the ASCENT Decision, SBC-ASI will provide, on rates, terms, and conditions that are just, reasonable, nondiscriminatory, and in compliance with all applicable federal laws and regulations, physical collocation of equipment necessary for interconnection or, if applicable, access to unbundled packet switching network elements at premises owned by SBC-ASI or leased by SBC-ASI from any entity other than its affiliated ILEC. SBC-ASI will not provide collocation at premises where it is not practical to do so for technical reasons or because of space limitations.

### 31. TERMS APPLYING TO SBC-ASI OPERATIONAL SUPPORT SYSTEMS

#### A. CLEC Responsibilities.

- (1) CLEC shall utilize SBC-ASI's electronic interfaces, as described throughout this Agreement, only for the purposes of establishing and maintaining Resale Services through SBC-ASI's Security Guidelines and OSS Policies detailed in this Agreement. Failure to comply with such Security Guidelines and OSS Policies may result in forfeiture of electronic access to OSS functionality.
- (2) CLEC shall be responsible for and indemnifies SBC-ASI against any cost, expense or liability relating to any unauthorized entry or access into, or use or manipulation of SBC-ASI's OSS from CLEC systems, workstations or terminals or by CLEC employees or agents or any third party gaining access through information and/or facilities obtained from or utilized by CLEC and shall pay SBC-ASI for any and all damages caused by such unauthorized entry.
- (3) CLEC's access to SBC-ASI's OSS will only be utilized to view Customer Proprietary Network Information ("CPNI") of another carrier's customer where CLEC has obtained an authorization for release of CPNI from the customer and has obtained an authorization to become the customer's service provider. The authorization for release of CPNI must comply with all applicable state and federal statutes, rules, and regulations.
- (4) CLEC is solely responsible for determining whether proper authorization has been obtained and holds SBC-ASI harmless from any loss caused by CLEC's failure to obtain proper CPNI consent from customer.
- (5) CLEC is responsible for all actions of its employees using any of SBC-ASI's OSS systems. CLEC agrees to pay all reasonable costs and expenses, including labor costs, incurred by SBC-ASI as a result of any and all inaccurate ordering or usage of the OSS, if such costs are not already recovered through other charges assessed by SBC-ASI to CLEC.
- (6) CLEC shall indemnify and hold SBC-ASI harmless against any claim made by a customer of CLEC or other third parties against SBC-ASI caused by or related to CLEC's use of any SBC-ASI OSS.
- (7) SBC-ASI retains the right to audit all activities by CLEC using any SBC-ASI OSS. All such information obtained through an audit shall be deemed proprietary and shall be covered by the Parties Non-Disclosure Agreement signed in conjunction with the execution of this Agreement.

**B. Security Guidelines.**

- (1) Both Parties will maintain accurate and auditable records that monitor user authentication and machine integrity and confidentiality (e.g., password assignment and aging, chronological logs configured, system accounting data, etc.).
- (2) Both Parties shall maintain accurate and complete records detailing the individual data connections and systems to which they have granted the other Party access or interface privileges. These records will include, but are not limited to, user ID assignment, user request records, system configuration, time limits of user access or system interfaces. These records should be kept until the termination of this Agreement or the termination of the requested access by the identified individual. Either Party may initiate a compliance review of the connection records to verify that only the agreed to connections are in place and that the connection records are accurate.
- (3) Each Party shall notify the other Party immediately upon termination of employment of an individual user with approved access to the other Party's network.
- (4) Both Parties shall use an industry standard virus detection software program at all times. The Parties shall immediately advise each other by telephone upon actual knowledge that a virus or other malicious code has been transmitted to the other Party.
- (5) All physical access to equipment and services required to transmit data will be in secured locations. Verification of authorization will be required for access to all such secured locations. A secured location is where walls and doors are constructed and arranged to serve as barriers and to provide uniform protection for all equipment used in the data connections which are made as a result of the user's access to either the CLEC or SBC-ASI network. At a minimum, this shall include: access doors equipped with card reader control or an equivalent authentication procedure and/or device, and egress doors which generate a real-time alarm when opened and which are equipped with tamper resistant and panic hardware as required to meet building and safety standards.
- (6) Both Parties shall maintain accurate and complete records on the card access system or lock and key administration to the rooms housing the equipment utilized to make the connection(s) to the other Party's network. These records will include management of card or key issue, activation or distribution and deactivation.
- (7) Each Party will monitor its own network relating to any user's access to the Party's networks, processing systems, and applications. This information may be collected, retained, and analyzed to identify potential security risks without notice. This information may include, but is not limited to, trace files, statistics, network addresses, and the actual data or screens accessed or transferred.

- (8) Each Party shall notify the other Party's security organization immediately upon initial discovery of actual or suspected unauthorized access to, misuse of, or other "at risk" conditions regarding the identified data facilities or information. Each Party shall provide a specified point of contact. If either Party suspects unauthorized or inappropriate access, the Parties shall work together to isolate and resolve the problem.
- (9) In the event that one Party identifies inconsistencies or lapses in the other Party's adherence to the security provisions described herein, or a discrepancy is found, documented, and delivered to the non-complying Party, a corrective action plan to address the identified vulnerabilities must be provided by the non-complying Party within ten (10) calendar days of the date of the identified inconsistency. The corrective action plan must identify what will be done, the Party accountable/responsible, and the proposed compliance date.
- (10) Each Party is responsible to notify its employees, contractors and vendors who will have access to the other Party's network, on the proper security responsibilities identified within this Agreement. Adherence to these policies is a requirement for continued access to the other Party's systems, networks or information. Exceptions to the policies must be requested in writing and approved by the other Party's information security organization.

C. General OSS Policies.

- (1) Due to enhancements and on-going development of access to SBC-ASI's OSS functions, certain interfaces described in this Agreement may be modified, temporarily unavailable or may be phased out after execution of this Agreement.
- (2) Each Party's resources are for approved business purposes only.
- (3) Each Party may exercise at any time its right to inspect, record, and/or remove all information contained in its systems, and take appropriate action should unauthorized or improper usage be discovered.
- (4) Individuals will only be given access to resources that they are authorized to receive and which they need to perform their job duties. Users must not attempt to access resources for which they are not authorized.
- (5) Authorized users must not develop, copy or use any program or code which circumvents or bypasses system security or privilege mechanism or distorts accountability or audit mechanisms.
- (6) Actual or suspected unauthorized access events must be reported immediately to each Party's security organization or to an alternate contact identified by that Party. Each Party shall provide its respective security contact information to the other.

D. User Identification.

- (1) Access to each Party's corporate resources will be based on identifying and authenticating individual users in order to maintain clear and personal accountability for each user's actions.
- (2) User identification shall be accomplished by the assignment of a unique, permanent user ID, and each user ID shall have an associated identification number for security purposes.

E. User Authentication.

- (1) Users will usually be authenticated by use of a password. Strong authentication methods (e.g. one-time passwords, digital signatures, etc.) may be required in the future.
- (2) Passwords must not be stored in script files.
- (3) Passwords must be entered by the user in real time.
- (4) Systems will require users to change their passwords at regular intervals.
- (5) Personal passwords must not be shared. A user who has shared his password is responsible for any use made of the password.

F. Access and Session Control.

- (1) Destination restrictions will be enforced at remote access facilities used for access to OSS interfaces. These connections must be approved by each Party's corporate security organization.
- (2) Terminals or other input devices must not be left unattended while they may be used for system access. Upon completion of each work session, terminals or workstations must be properly logged off.
- (3) On the destination system, users are granted access to specific resources (e.g. databases, files, transactions, etc.). These permissions will usually be defined for an individual user (or user group) when a user id is approved for access to the system.

G. Software and Data Integrity.

- (1) Each Party shall use a comparable degree of care to protect the other Party's software and data from unauthorized access, additions, changes and deletions as it uses to protect its own similar software and data. This may be accomplished by physical security at the work location and by access control software on the workstation.

- (2) Untrusted software or data shall be scanned for viruses before use on a Party's corporate facilities that can be accessed through the direct connection or dial up access to OSS interfaces.
- (3) Unauthorized use of copyrighted software is prohibited on each Party's corporate systems that can be access through the direct connection or dial up access to OSS Interfaces.
- (4) Proprietary software or information (whether electronic or paper) of a Party shall not be given by the other Party to unauthorized individuals. When it is no longer needed, each Party's proprietary software or information shall be returned by the other Party or disposed of securely. Paper copies shall be shredded. Electronic copies shall be overwritten or degaussed.

#### H. Monitoring and Audit.

To deter unauthorized access events, a warning or no trespassing message will be displayed at the point of initial entry (i.e., network entry or applications with direct entry points). Each Party should have several approved versions of this message. Users should expect to see a warning message similar to this one:

*"This is a (SBC-ASI or CLEC) system restricted to Company official business and subject to being monitored at any time. Anyone using this system expressly consents to such monitoring and to any evidence of unauthorized access, use, or modification being used for criminal prosecution."*

After successful authentication, each session will display the last logon date/time and the number of unsuccessful logon attempts. The user is responsible for reporting discrepancies.

#### 32. ACCESS TO RIGHTS-OF-WAY

Pursuant to Section 251(b)(4) of the Act, to the extent required by the ASCENT Decision, SBC-ASI will provide access to its poles, ducts, conduits, and rights-of-way to CLEC on rates, terms, and conditions that are consistent with Section 224 of the Act.

*[The remainder of this page intentionally left blank.]*

*IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their respective duly authorized representatives. Each person whose signature appears below represents and warrants that he or she has authority to bind the Party on whose behalf he or she has executed this Agreement.*

SBC Advanced Solutions, Inc. on behalf of  
itself and Ameritech Advanced Data  
Services of Illinois, Inc., Ameritech  
Advanced Data Services of Indiana, Inc.,  
Ameritech Advanced Data Services of  
Michigan, Inc., Ameritech Advanced Data  
Services of Ohio, Inc. and Ameritech  
Advanced Data Services of Wisconsin, Inc.

By: Lincoln E. Brown

Print Name: Lincoln E. Brown

Title: Director - Regulatory & Interconnection

Date Signed: 3/09/01

LOGIX Communications Corporation

By: Albert H. Pharis

Print Name: Albert H. Pharis

Title: President & CEO

Date Signed: 3/9/01



## SCHEDULE A - PRICING

### I. Terms Applying to All Service Pricing

The retail prices set forth below do not include FCC or other mandated surcharges, applicable taxes, and do not reflect the applicable avoided cost resale discount, if any. Such surcharges and applicable taxes shall be billed on a monthly basis. Customer will pay SBC-ASI or SBC-ASI's billing agent for all SBC-ASI Services actually installed and billed at the volume level that exists during each current billing cycle. Prices included in Schedule A are subject to change with thirty (30) calendar days notice to CLEC.

### II. ATM Pricing

ASI PRODUCT AND SERVICES IN MISSOURI							
ASI ATM	USOC	Monthly Recurring	NRC	3 Year	NRC	5 Year	NRC
<b>User Network Interface (UNI)</b>							
DS1 1-384 Kbps	UU6AA	\$ 550	\$ 1,200	450	\$ 1,200	350	\$ 1,200
DS1 385-768 Kbps	UU6AB	\$ 650	\$ 1,200	525	\$ 1,200	400	\$ 1,200
DS1 769 Kbps - 1.5 Mbps	UU6AC	\$ 750	\$ 1,200	650	\$ 1,200	500	\$ 1,200
DS3 1 - 20 Mbps	UU6BD	\$ 3,700	\$ 3,000	3200	\$ 3,000	2800	\$ 3,000
DS3 21-40 Mbps	UU6BE	\$ 4,200	\$ 3,000	3400	\$ 3,000	3000	\$ 3,000
OC-3c 21-50 Mbps	UU6CF	\$ 4,400	\$ 3,000	3600	\$ 3,000	3150	\$ 3,000
OC-3c 51-100 Mbps	UU6CG	\$ 4,800	\$ 3,000	4000	\$ 3,000	3400	\$ 3,000
OC-3c 101-148 Mbps	UU6CH	\$ 5,200	\$ 3,000	4400	\$ 3,000	3800	\$ 3,000
OC-3c 21-50 Mbps Protected	UU6CF	\$ 5,400	\$ 3,000	4600	\$ 3,000	4150	\$ 3,000
OC-3c 51-100 Mbps Protected	UU6CG	\$ 5,800	\$ 3,000	5000	\$ 3,000	4400	\$ 3,000
OC-3c 101-148 Mbps Protected	UU6CH	\$ 6,200	\$ 3,000	5400	\$ 3,000	4800	\$ 3,000
IMA 3 Mbps	UU6YO	\$ 1,400	\$ 1,300	1200	\$ 1,300	1000	\$ 1,300
IMA 4.5 Mbps	UU6YR	\$ 1,700	\$ 1,700	1500	\$ 1,700	1300	\$ 1,700
IMA 6 Mbps	UU6YS	\$ 2,000	\$ 2,100	1800	\$ 2,100	1600	\$ 2,100
IMA 12 Mbps	UU6YT	\$ 3,000	\$ 3,700	2700	\$ 3,700	2400	\$ 3,700
ATM GI- 0 to 384K	UG6AA	\$ 275	\$ 1,200	\$200	\$ 1,200	\$175	\$ 1,200
ATM GI- 385 to 768K	UG6AB	\$ 325	\$ 1,200	\$238	\$ 1,200	\$200	\$ 1,200
ATM GI- 769 to 1.5M	UG6AC	\$ 375	\$ 1,200	\$288	\$ 1,200	\$250	\$ 1,200
ATM GI DS3- 1 to 20Mb	UG6BD	\$ 1,850	\$ 3,000	\$1,600	\$ 3,000	\$1,400	\$ 3,000
ATM GI DS3- 21 to 40Mb	UG6BE	\$ 2,100	\$ 3,000	\$1,700	\$ 3,000	\$1,500	\$ 3,000
ATM GI OC3- 21 to 50Mb	UG6CF	\$ 2,640	\$ 3,000	\$2,160	\$ 3,000	\$1,890	\$ 3,000
ATM GI OC3- 51 to 100Mb	UG6CG	\$ 2,880	\$ 3,000	\$2,400	\$ 3,000	\$2,040	\$ 3,000
ATM GI OC3-101 to 148Mb	UG6CH	\$ 3,120	\$ 3,000	\$2,640	\$ 3,000	\$2,280	\$ 3,000

Network to Network Interface (NNI)							
<b>B-ICI</b>							
DS1 1.5 Mbps	BB6AJ	\$ 1,430	\$ 1,200	1230	\$ 1,200	1030	\$ 1,200
DS3 40 Mbps	BB6BK	\$ 4,400	\$ 3,000	3600	\$ 3,000	3200	\$ 3,000
OC-3c 148 Mbps	BB6CL	\$ 5,700	\$ 3,000	4900	\$ 3,000	4300	\$ 3,000
OC-3c 148 Mbps protected	BB6CL	\$ 6,700	\$ 3,000	5900	\$ 3,000	5350	\$ 3,000
ATM NGI DS1	NG1AJ	\$ 450	\$ 1,440	\$346	\$ 1,440	\$300	\$ 1,440
ATM NGI DS3	NG1AK	\$ 2,520	\$ 3,600	\$2,040	\$ 3,600	\$1,800	\$ 3,600
ATM NGI OC3	NG1CL	\$ 3,744	\$ 3,600	\$3,168	\$ 3,600	\$2,736	\$ 3,600
<b>Misc Services</b>							
Private Network Link-1.5Mb	N3LAJ	\$ 600	\$ 800	N/A	N/A	N/A	N/A
Private Network Link-40Mb	N3LBK	\$ 3,500	\$ 800	N/A	N/A	N/A	N/A
Private Network Link-148Mb	N3LCL	\$ 4,000	\$ 800	N/A	N/A	N/A	N/A
CES for Pt-Pt DS1*	CEUPX	\$ 120	\$ 250	N/A	N/A	N/A	N/A
CES for Super Trunk or Smart Trunk*	CEU1X	\$ 102	\$ 250	N/A	N/A	N/A	N/A
Additional VCCs	VC4	\$ 18	\$ 60	N/A	N/A	N/A	N/A
Additional VPCs	VP9	\$ 28	\$ 60	N/A	N/A	N/A	N/A
CBR DS1 QoS, per PVC	BTRCX	\$ 10	\$ -	in 64K increment			
CBR DS3 or OC3 QoS, per PVC	BTRC3	\$ 15	\$ -	In 1 Meg Increment			
<b>*Note: Customer must have DS3 or OC3 UNI service</b>							

### III. Frame Relay Pricing

Frame Relay	USOC	Monthly Recurring				Non Recurring
		Month to Month	3 Year	5 Year	7 Year	
56Kbps Access Link	L7A5X	72.00	72.00	66.00	66.00	350.00
56 Kbps Port	P7E5X	87.00	63.00	45.00	31.00	26.00
Total 56 K		159.00	135.00	111.00	97.00	376.00
64 Kbps Access Link	L7AOX	72.00	72.00	66.00	66.00	350.00
64 Kbps Port	P7EOX	87.00	63.00	45.00	31.00	26.00
Total 64 K		159.00	135.00	111.00	97.00	376.00
128 Kbps Access Link	L7APX	145.00	145.00	137.75	137.75	628.00
128 Kbps Port	P7EPX	127.32	115.91	112.40	109.76	26.00
Total 128 K		272.32	260.91	250.15	247.51	654.00
256 Kbps Access Link	L7AQX	145.00	145.00	137.75	137.75	628.00
256 Kbps Port	P7EQX	136.72	124.46	120.69	117.86	26.00
Total 256 K		281.72	269.46	258.44	255.61	654.00
384 Kbps Access Link	L7A6X	165.00	150.00	142.50	142.50	628.00
384 Kbps Port	P7E6X	146.19	133.08	129.05	126.03	26.00

Total 384K		311.19	283.08	271.55	268.53	654.00
512 Kbps Access Link	L7ARX	165.00	140.25	132.00	132.00	600.00
512 Kbps Port	P7ERX	190.00	162.00	152.00	142.00	26.00
Total 512 K		355.00	302.25	284.00	274.00	626.00
768 Kbps Access Link	L7ASX	165.00	140.25	132.00	132.00	600.00
768 Kbps Port	P7ESX	260.00	220.00	208.00	195.00	26.00
Total 768 K		425.00	360.25	340.00	327.00	626.00
1.536 Mbps Access Link	L7A7X	165.00	140.25	132.00	132.00	600.00
1.536 Mbps Port	P7E7X	410.00	348.00	328.00	307.00	26.00
Total 1.536 Mbps		575.00	488.25	460.00	439.00	626.00
DS3 Access Link	L7A8X	2,800.00	2,300.00	2,100.00	2,000.00	3,000.00
DS3 Port	P7E8X	1,000.00	900.00	800.00	700.00	30.00
Total DS3		3,800.00	3,200.00	2,900.00	2,700.00	3,030.00
<b>Logical Link</b>						
56K	L8G5X	8.00	6.00	4.00	3.00	25.00
64K	L8GOX	8.00	6.00	4.00	3.00	25.00
128K	L8GPX	12.00	10.00	8.00	7.00	25.00
256K	L8GQX	15.00	13.00	11.00	10.00	25.00
384K	L8G6X	20.00	16.00	14.00	12.00	25.00
512K	L8GRX	28.00	24.00	20.00	18.00	25.00
768K	L8GSX	40.00	32.00	28.00	25.00	25.00
1.536M	L8G7X	50.00	48.00	46.00	43.00	25.00
2M	L7GEX	65.00	60.00	55.00	52.50	30.00
3M	L7GFX	65.00	60.00	55.00	52.50	30.00
4M	L7GGX	65.00	60.00	55.00	52.50	30.00
5M	L7GHX	70.00	65.00	60.00	57.50	30.00
6M	L7GJX	70.00	65.00	60.00	57.50	30.00
7M	L7GKX	70.00	65.00	60.00	57.50	30.00
8M	L7GLX	75.00	70.00	65.00	62.50	30.00
9M	L7GMX	75.00	70.00	65.00	62.50	30.00
10M	L7GNX	80.00	75.00	70.00	67.50	30.00

#### IV. Native LAN Plus Pricing

ASI NATIVE LAN+	USOC	Month to Month	NRC	3 Year	NRC	5 Year	NRC
<b>UNI</b>							
100 Mbps Ethernet	UU6FX	\$2,400.00	\$3,000.00	\$2,100.00	\$3,000.00	\$1,800.00	\$3,000.00
<b>Protected UNI</b>							
100 Mbps Ethernet	PQUFX	\$3,400.00	\$3,000.00	\$3,100.00	\$3,000.00	\$2,800.00	\$3,000.00
<b>B-ICI</b>							
100 Mbps Ethernet	BB6FX	\$3,400.00	\$3,000.00	\$3,100.00	\$3,000.00	\$2,800.00	\$3,000.00

<b>Protected B-ICI</b>							
100 Mbps Ethernet	PQCFX	\$4,400.00	\$3,000.00	\$4,100.00	\$3,000.00	\$3,800.00	\$3,000.00

## V. VPOP-DAS Pricing

The prices do not include any independent company charges, inter-exchange carrier charges, or charges for FRS or ATM.

In the event (1) SBC-ASI determines that additional equipment and facilities (such as outside plant, cable, capacity or memory) are required; (2) CLEC requests additional Service or features which are not included in this Addendum; (3) CLEC requests a transition of the Service(s) provided hereunder to new or alternate technologies offered by SBC-ASI; or (4) CLEC requests an upgrade from Dial Access Service (Shared) to Dial Access Service (Dedicated), SBC-ASI may perform a financial study to determine the price(s) for the requested service and, if appropriate, the parties shall execute a modification to this Agreement and Schedule reflecting the additional service and the agreed upon price(s).

The prices set forth below do not include intrabuilding network cable, Simple Inside Wire, repair services for such cable and wire, wiring associated with CLEC-provided terminal equipment, Off-premises station mileage, WATS, 800 Service, usage associated with Foreign Exchange Service, Data Lines, or Tie Lines.

<b>Tier 1 (Metro) Pricing Structure</b>							
<b>Minimum Volume</b>		<b>Flat Rate 3 Year</b>		<b>Flat Rate 4 Year</b>		<b>Flat Rate 5 Year</b>	
<b>Per 24 Port Group</b>	<b>Per Port</b>	<b>Per 24 Port Group</b>	<b>Per Port</b>	<b>Per 24 Port Group</b>	<b>Per Port</b>	<b>Per 24 Port Group</b>	<b>Per Port</b>
1	24	\$768	\$32	\$744	\$31	\$720	\$30
2-5	48-120	\$744	\$31	\$720	\$30	\$696	\$29
6-17	144-408	\$720	\$30	\$696	\$29	\$672	\$28
18-53	432-1272	\$696	\$29	\$672	\$28	\$648	\$27
54-161	1296-3864	\$672	\$28	\$648	\$27	\$624	\$26
162-485	3888-11,640	\$648	\$27	\$624	\$26	\$600	\$25
486-971	11,664-23304	\$624	\$26	\$600	\$25	\$576	\$24
972-1457	23328-34,968	\$576	\$24	\$552	\$23	\$528	\$22
1458-58	>46,632	\$528	\$22	\$504	\$21	\$480	\$20
<b>Tier 2 (LATA-wide) Pricing Structure</b>							
<b>Minimum Volume</b>		<b>Flat Rate 3 Year</b>		<b>Flat Rate 4 Year</b>		<b>Flat Rate 5 Year</b>	
<b>Per 24 Port Group</b>	<b>Per Port</b>	<b>Per 24 Port Group</b>	<b>Per Port</b>	<b>Per 24 Port Group</b>	<b>Per Port</b>	<b>Per 24 Port Group</b>	<b>Per Port</b>
1	24	\$1008	\$42	\$984	\$41	\$960	\$40
2-5	48-120	\$984	\$41	\$960	\$40	\$936	\$39
6-17	144-408	\$960	\$40	\$936	\$39	\$912	\$38

18-53	432-1272	\$39	\$38	\$37
54-161	1296-3864	\$38	\$37	\$36
162-485	3888-11,640	\$37	\$36	\$35
486-1157	11,664-23304	\$36	\$35	\$34
1158-1457	23328-34,968	\$34	\$33	\$32
>1458	>46,632	\$32	\$31	\$30

\*Quantity of 1 denotes single Tier 1 and Tier 2 port combination, with total quantity of port groups equaling 2

NOTE: The Dial Access Port pricing does NOT include the required access at the customer host into the Frame Relay or ATM Cell Relay cloud

Price Schedule. VPOP-DAS is provided on a month to month, 3-year, 4-year, or 5-year service period. The price of month-to-month service is \$2,400 per month, per port group. The prices for 3-year, 4-year, or 5-year service periods are reflected on the following two charts. Port quantities can be aggregated across SBC-ASI to determine volume discount. Volume discounts are determined separately for Metro and LATA-wide port quantities. There is a \$1,000 nonrecurring charge per port group for month-to-month service, and for each port group that does not remain in service for a minimum of two years.

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## VI. DSL Transport Pricing

Notwithstanding any other provision in this schedule, all pricing contained in this Schedule A reflects current rates and is subject to change by SBC-ASI with thirty (30) calendar days notice to CLEC.

The wholesale discount reflected in section 11F(3) of this Agreement, as applied to DSL Transport Services, is only applicable to SBC-ASI's grandfathered embedded retail DSL Transport customers and remote local area network ("RLAN") business customers.

NOTE: As of July 2000, SBC-ASI has communicated the speed offerings described in this Agreement which are in process of being implemented. Actual implementation by SBC-ASI may not yet be complete, in which case all the speed offerings shown below may not be available in all areas of SBC-ASI Territory. SBC-ASI will specify any such discrepancies to CLEC in writing upon request.

This chart includes recurring and non-recurring SBC-ASI standard charges for DSL Transport Service provided exclusively to ISPs. Pricing for the resale DSL Transport Services provided to RLAN business customers is determined on an ICB basis. Additional charges may apply for other products and services, or for customization. The avoided cost resale discount does not apply to the resale of DSL Transport Services provided to ISPs.

	STANDARD RATES
<u>Length of Term</u>	Month to Month
<u>Monthly Pricing</u>	
Basic 384 -768 x 128	\$35
Basic+ 768-1.5 x 128	\$45
Premium 1.5-4.0 x 384	\$89
Premium+ 4.0-6.0 x 384	\$129
Symmetric 384 x 384	\$69
<u>One Time Charges</u>	
*DSL Service Activation	\$50

(No volume or term commitment required.)

\*DSL Service Activation charge applies when the service order is not electronically sent to SBC-ASI.